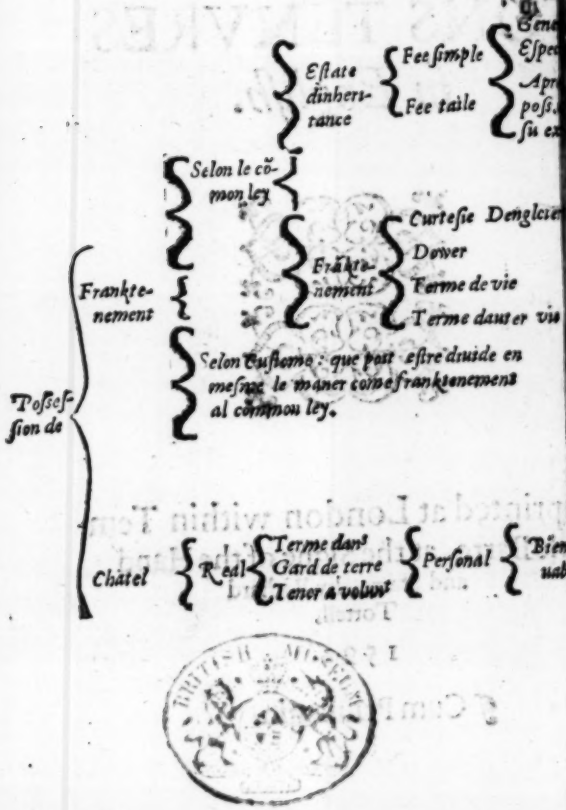
LITTLE-
TONS TENVRES.
in Engliſh.

Imprinted at London within Temple Barre, at the Signe of the Hand and Starre, by Richard Tottell.

1592.

Cum Priuilegio.

¶ A figure of the diuiſion of poſſeſsions.



Enaunt in fee simple is hee whych hath landes or tenements to hold to him and to his heires for euer.

And it is called in Latin (Feodū simplex) for (feodum) is called inheritance, and (simplex) is as much to say as lawful or pure, so (feodum simplex) is as much to say as lawfull or pure inheritaunce. For if a man shall purchase landes or tenements in fee simple, it behoueth him to haue these wordes in his purchase, To haue and to hold vnto him & to his heires, for these wordes (his heires) make the estate of inheritaunce. Mi. 20. H. 6. fol. 38.

¶ For if any man purchase lands by these wordes, (to haue and to hold to him for euer) or by such wordes, (to haue & to hold to him and to his assignes for euer) In these two cases he hath no estate but for terme of life, for that that he lacketh these wordes, his heires, which wordes onely make the estate of inheritance in all feoffements and graunts.

¶ And if a man purchase lands in fee simple and die without issue, euerie one that is his next cosin collateral of the whole bloud, how farre soeuer that he be from him of degree, may enherite and haue the same land as heire to him. But if there be father and sone, and the father hath a brother, which is vncle vnto the sonne, and the sonne purchase land in fee simple, and dyeth without issue lyuing the father, the vncle shall haue the lande as

heire vnto the sonne, and not the father. Yet ꝑ father is more nigh of blood vnto the sonne, for that ꝑ there is a ground in the lawe, that inheritance may lineally discend, but not lineally ascend. Yet if the sone in such case die without issue, & his vncle entreth into ꝑ land as heire vnto the sonne so as he ought by the lawe, & after if the vncle decease without issue liuing the father, thē shal the father haue the land as heire vnto the vncle, & not heire vnto ꝑ sonne, for that ꝑ he commeth vnto the land by collateral discent, & not by lineal ascention.

And in such case where the sonne purchaseth land in fee simple, & dyeth without issue, they of his blood on the fathers side shall inherite as heire vnto him, before any of ꝑ blood of the mothers side. But if hee haue no heire on the fathers side, then shal the land discend vnto his heire on the mothers side. And this is the opinion of the Justices M. 12. E. 4. fo. 34. But there it was holden, if any land discend vnto a man by the fathers side, which dyeth without issue, that his next heire on the fathers side shal inherite vnto him, that is to say, the next of blood of the father of ꝑ graūd fathers side. And for default of such an heire, they that bee of the fathers blood of the part of the mothers of the father, (that is to say) the grādmother ought to enherit. And if there bee no such heire on the fathers side, then the lorde shall haue the land by eschete. And so it is if a man take a wife inherite in fee simple,

which

which hath issue a sonne & dieth, & ꝑ sonne entreth into the tenements as sonne & heire vnto his mother. & after dieth without issue, the heirs on the mothers side ought to enherite the tenements, & not the heirs of the fathers side.

And if there be no heires on the mothers side, then the lord of whom the same lands is holde, shal haue the same land by eschete. In ꝑ same maner it is if lands discend vnto the sonne on the fathers side, & entreth, & after dieth without issue, the land shal discende vnto the heires on the fathers side, and not vnto the heirs on the mothers side. And if there be none heirs on the fathers side. tho the lord of whom the lande is holden shal haue the same land by eschete. And loe ye may see the diuersity, where the sonne purchaseth lands in fee simple, & where he cometh into those lands or tenements by discent on the fathers side or on the mothers side.

Also if there be three brethren, & the middel brother purchase lande in fee simple, and dieth without issue, the elder brother shall haue the land by discent & not the yonger. Also if there be three brethren and the yongest brother purchaseth land in fee simple, & dieth without issue, ꝑ elder brother shall haue the land by discent, & not the middel brother, so that ꝑ the elder brother is more worthy of blond.

¶ And it is to be vnderstand that no man shal haue land in fee simple by discent as heire vnto any man, but that hee be his heire of the whole blode. For if a man haue issue two sonnes by 2. bentres, and the elder purchaseth

lande in fee simple and dieth without issue, the yonger brother shall not haue the land, but the vncle of the elder brother, or some other byg nigh colyn shall haue it, for that ỹ the yonger is but of the halfe bloude to the elder brother. And if a man haue a sonne and a daughter by one venter, and a sonne by an other venter, & the sonne by the first venter purchaseth lande in fee simple and dieth without issue, the sister shal haue the land by discent as heire vnto her brother, and not the yonger brother, for that ỹ the sister is of the whole bloud to her elder brother.

And also where a man is seised of land in fee simple, & he hath issue a sonne & a daughter by one venter, and a sonne by another venter and dyeth, and the elder sonne entreth and dieth without issue, the daughter shal haue the lande and not the yonger sonne, and yet is the yonger sonne heire vnto his father and not his brother. But if the elder sonne enter not into the lande after the death of his father, but dieth before entre be made by hym, the ỹ yonger brother may enter and haue the lande as heire vnto his father. But where the elder sonne in the case aforesaid entreth after the death of his father, and thereof hath possession, then ỹ sister shall haue the lande. Nemia possessio fratris de feodo simplici facit sororem esse heredem. For the possession of ỹ brother in fee simple maketh the sister to bee heire.

But if there bee two brethren by dyuers venters,

bentres and the elder is seised in fee simple, & dyeth without issue, and his vncle entreth as heire vnto him, which also dieth without issue, then the ponger brother may haue the land as heire vnto his vncle, because he is of the whole blood to him, though he be but of halfe blood vnto his elder brother.

And it is to be vnderstand, that this worde (inheritance) is not onely vnderstand where a man hath landes or tenementes by discent of heritage. But also euery fee simple or fee tayle that a man hath by his purchase, may bee said inheritaunce, for that, that his heires may inherite him. For in a writ of right that a man bringeth of lande that was of hys owne purchase, the writ shall say: Quam clamat esse ius et hereditatē suam. That is to say, which he claimeth to bee his right and his enheritaunce. And so it shalbee sayd in diuers other writtes which a man or a woman bringeth of their owne purchase, as it appeareth by the Register.

And of such thinges as a man may haue a manuell occupacion, possession, or reseit, as of landes, tenementes, rentes, and such other, a man shal say in his pledinge, and in way of barre, that one such was seised in his demesne as of fee. But of such thinges that lye not in manuell occupation &c. as of an aduowson of a church, and such manner thing, there he shal say that hee was seysed as of fee, and not in hys demesne as of fee. And in latin it is in

the ſame caſe ſaid. Quod talis fuit ſeiſitus in dominico ſuo vt in feodo. that is to ſay, that ſuch a one was ſeiſed in his demeane as of fee. and in that other. Quod talis fuit ſeiſitus &c. vt de feodo, that is to ſay, that one ſuch was ſeyſed as of fee.

And note wel that a man may not haue a more large, ne greater eſtate of inheritaunce then fee ſimple.

Alſo, purchaſe is called the poſſeſſion of landes or tenementes that a man hath by hys deede, or by his agrement, vnto which poſſeſſion he commeth not by diſcent of any of his auncetters, or of his coſins, but by his owne deede.

¶ Fee tayle.

TEnaunt in fee taile is by force of a ſtatute of W. 2. ca. 1. For at the cōmen law before the ſaid ſtatut, al inheritāces were fee ſimple For al the gifts which bene ſpecified vpon the ſame ſtatut, were fee ſimple cōditionally, as it appeareth by ỹ reherſal of ỹ ſtatut. And now by the ſame ſtatut, tenant in the taile is ſaid in two manners, that is to ſay, tenant in taile general and tenant in taile ſpecial.

Tenaunt in tayle general is, where landes or tenements bee geeuen to a man and to hys heires of his body begotten. In this caſe it is ſayde generall tayle, for that whatſoeuer woman that the tenaunt taketh to wife, if hee haue many wyues, and by ech of them hath iſſue,

ille, yet eth one of these illues by possibilitie may enherite the tenements by force of the said gift, because that euery such illue is of his body engendred.

In the same maner it is, where landes and tenements be geuen to a woman, & to the heirs comming out of her body, howbeit that she haue many husbandes, yet the illue that she may haue by eth husbande may enherite as illue in the tayle by force of such gyftes. And therefore such gifftes bene called general tayle.

Tenaunt in tayle speciall is, where landes and tenementes bee geuen vnto a man & his wife, and the heires of their two bodyes begotte. In such case none may enherite by force of such gift, but those that bee engendred betweene them two, & it is called especiall tayle, for that if the wife dye, and hee take an other wife, & hath illue, the illue of the seconde wife shall neuer enherite by force of such gift, nor also the illue of the second husbande if the first husbande die.

In the same manner it is, where landes and tenementes bee geuen by a man vnto an other with a wife, which is the daughter or cosin to the geuer, in frankie marriage, which gift hath inheritance by these wordes (frankie marriage) vnto it annexed, how be it that they be not expresselye sayd or rehersed in the gyft, that is to say, that these doness shall haue these landes or tenementes to them & to their

heires

heires betwene them two engendred, and this is ſaid eſpecial taile, for that the iſſue of the ſecond wife may not inherite.

And note wel, that this word (talliare) is to ſay, to ſet vnto ſome certainty, or els limitt vnto ſome certaine inheritaunce. And for that that it is limitted ſet in certain, what iſſue ſhal inherite by force of ſuch gifts, and how longe that the inheritaunce ſhal endure. Therfore it is called in latin (Feodum talliatum) i. hereditas in quadam certitudine limitata. For if tenant in generall taile die without iſſue, the donour or his heirs ſhal inherite as in their reuerſion. In the ſame wiſe is it of the tenant in the taile ſpecial as. For in euery gift of taile without more ſaying, the reuerſion of fee ſimple is in the donour.

And the donees and their heires ſhall doo to the donour and to his heires, ſuch ſeruices as the donour doth vnto his ſuperiour next aboue, Except the donees in franke mariage, which ſhal holde quietly from euery manner ſeruice, (but if it bee for fealty) vntill the fourth degree be paſt. And after that the fourth degree is paſt, the iſſue in the firſt degree, and ſo forth the other iſſues after him ſhal holde of the donour and of his heires as they hold ouer, as is afore ſaide.

And the degrees in franke mariage ſhalbee accompted in ſuch manner, that is to ſay, from the donour to the donees in frank mariage the firſt degree, for that that the wife that is one

of

of the donees ought to bee daughter, sister, or other cosin to the donour. And from the donees vnto their issues shalbe accompted the second degree. And from their issue vnto their issue, the third degree, & so forth &c.

And the cause is, for that after euery such gift, the issues that come of the donour, and the issues that come of the donees, after the fourth degree past of both partyes in such fourme to bee accompted, may bee wont them by the lawe of holy church intermary. And ꝑ the donee in franke mariage shalbee the first degree of the sower degrees, a man may see in a plee vpon a writ of ryght of warde, Anñ 31.E.3. where the pleintife pleadeth that his Ayel or Graundfather was seysed of certaine landes &c. And that hee helde of an other by knights seruice &c. which gaue the lande vnto one Raufe Hollande wyth his sister in franke mariage &c. And also these tailes before saide bee specified in the saide statute of Westminster the second.

And there bee dyuers other estates in the taile howbeit that they be not specified by expresse wordes in the saide estatute, but they bee taken by the equitie of the statute, as yf landes bee geuen vnto a man and to his heirs males of his body engendred. In such case his heire male shall inheryte, and the issue female shall neuer inherit, yet in these other tayles aforesayd it is otherwise. In the same manner it is if landes bee geuen to a man and

to

to his heirs females of his body engendred. In this case his issue female shal enherite by force & forme of the said gift, and not the issue male, for that in such cases where the gift is, who ought to enherite and who not, the will of the donour shalbe obserued. And in case where landes be geuen vnto a man and to his heires males issuinge of his body, & he hath issue two sonnes and deceaseth, the elder sonne entreth as heire male, and hath issue a daughter & deceaseth, his brother shal haue the land and not the daughter, forthat the brother is heire male. But it shalbe other wise in these other tailes aforesaid, which bene especyfied in the sayde statute, the daughter shall enherite before the brother.

And if land be geuen vnto a man, and to his heires males of his body engendred, and hee hath issue a daughter, whoe hath issue a sone and deceaseth, and after that the donour deceaseth, in this case the sonne of the daughter shal not enherite by force of the taile, for that who soeuer shal enherite by force of a gift in ꝑ tayle made vnto his heires males, behoueth to conuey his discent away by the males. M. 18. E iiij. 3. fol. 45. But in such case the donour shall enter for that the donee ys dead without issue male in the lawe. In so much that the issue of the daughter may not conuey to him the discent of heire male. And in the same manner it is where landes bee geeuen to a man and to his wife, and to his heires

males

males of their two bodies ingendred.

Also if tenement be geuen to a man and his wyfe, and to the heires of the bodis of the man engendred, in this case the husband hath estate in the general taile, & the wyfe but estate for terme of life.

Also if landes bee geuen to the husbande and to the wife, and to the heires of the husbande which he engendreth of the bodie of the wife. In this case the husband hath estate in the special tayle, and the wife but for terme of lyfe.

And if the gift bee made to the husband and to the wife, and to the heires of the wyfe of her bodie by the husband engendred, then the wife hath estate in the special tayle, & the husband but for terme of life. But if landes be geuen to the husband and the wife, and to the heires that the husband engendreth on the bodie of the wyfe: In this case both haue estate in the taile, for that wyfe words (heires) is not limited vnmete to the one then to the other.

Also if landes be geuen to a man and his heires that he engendreth on the bodie of his wife, in this case the husband hath estate in taile special, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and land is geuen to the sonne, and to the heires of the body of his father engendred, this is a good taile, yet the father was dead at the time of the gift.

Also

Also there be many other estates in ȳ taile by the equitie of the saied estatute that bee not specified here. But if a man gette landes or tenements to another, to haue and to holde to him and to his heires males, or to hys heires females, he to whom such gift is made hath fee simple, for that it is not limitted by the gift of what body the issue male or female shal be, and so it may not in any thing be take by the equitie of the said estatut, and therefore he hath fee simple.

Tenaunt in taile after possibilitie of issue extinct.

Tenaunt in tayle after possibilitie of issue extinct, is whereas landes or tenementes be geuen vnto a man & his wife in the special taile, & one of them decease without issue, hee that suruiueth is tenaunt in the taile after possibilitie of issue extinct. And if they haue issue, during the life of the issue, hee that suruiueth shal not be said tenant in the tayle after possibilitie of issue extinct. Yet if the issue decease without issue, so that there be none alue that may inherite by force of the taile, then he that suruiueth of the twoone is tenant in the tayle after possibilitie of issue extinct.

Also if landes bee geuen to a man and to his heires that bee engendred on the bodie of his wife. In this case the wife hath nought in the tenementes, and the husband is seyſed

sed as donees in special taile. And in this case if the wyfe decease without issue of her bodie engendred by her husband, then the husband is tenaunt in the taile after possibilitie of issue extinct.

And note well, that none may be tenaunt in the tayle after possibilitie of issue extinct, but one of the donees, or the donee in speciall tayle, for the donees in generall tayle may never be saied tenaunt in the taile after possibilitie of issue extinct, for that alway during his lyfe, he may by possibility have issue that may inherite by force of the same taile. And so in the same maner the issue that is heire unto the donees in the special taile, may not be said tenaunt in tayle after possibilitie &c. causa qua supra.

And tenant in taile after possibilitie of issue extinct shall never be punished of wast, for the inheritance that once was in him. An. 10. H. 6. fo. 1. But he in the reversion may enter if he do alien in fee. An. 45. E. 3. fo. 22.

¶ Tenaunt by the Curtesie of England.

Tenaunt by the curtesie of England, is where a man taketh a wyfe seysed in fee simple, or in fee tayle generall, or as heire in the tayle speciall, and hath issue by the same wyfe, male or female, & the issue after being dead or alive, if the wyfe decease, the husband shal hold the same during his life by the lawe

of

of England, & this is called tenaunt by curtesy, for that it is not vsed in nāe other realme but onely in England. And some say that he shal not be said tenaunt by the curtesy, but if that childe that he hath by his wife be heard crie, for by the crie is the proufe that the childe that he had by his wife was borne.

¶ Tenant in Dower.

TEnant in dower is, where a man is seised of certeine lāds or tenements in fee simple, or in taile general, or as heire in taile special, & taketh a wife & deceaseth, the wife after the decease of her husband shalbe endowed of the thirde part of such landes or tenementes that were her husbandes any time during the couerture. To haue and to holde to the same wife in seueraltie by metes and bondes for terme of her life, whether she haue by her husband issue or noe, and of what age that the wife be, so that she passe the age of nine yeres at the time of her husbandes death, or els she shall not be endowed. And note wel, that by the common lawe the wife shall not haue for her dower but the thirde part of the tenementes, which were her husbandes during the espousels: By customs of some countrey she shal haue the halfe, and by customs of some townes or borough, she shall haue the whole, and in all these cases she shalbe said tenaunt in dower.

¶ Also there is two other maner of dowers, that is to say, dower called dowment at the church dore, and dower called dowment by the fathers assent. Dowment at the Church dore, is where a man of ful age is seised in fee simple which shalbee wedded vnto a wyfe, which hee commeth to the church dore, and there after affiance, and truethplyght made betweene them, endoweth hys wyfe of hys whole land, or of the halfe, or lesse parcel, and there openly declareth the quantitie, & the certaynetie of his land that shee shall haue for her dower. In this case the wife after the death of her husband shal enter into the said quantitie of lande, of which her husband endowed her without the assignement of any manne. Dowment by the fathers assent is, where the father is seised of tenementes in fee, and his sonne and heire apparaunt (when hee is wedded) endoweth his wife at the Church dore of parcel of the landes or tenementes of hys fathers, of the assent of his father, and assigneth the quantitie of the parcels: In this case after the death of the sonne, the wife shal enter in the same parcel without the assignemēt of any other. But it hath ben said in this case that it behoueth the wife to haue a deede of the father, proouing his assent and consent of such endowment. And if after the death of her husband shee enter and aske to haue such dower of the said two dowers at the church dore, then shee is concluded to clayme

any other Dower by the common lawe of any landes or tenementes, whych were of her sayed husband. But if shee will, shee may refuse such dower at the Church doore, and then shee may bee endowed after the course of the common lawe. And note well, that no wife shalbee endowed of the fathers assent in the fourme aforesaied, saue where the husband is sonne and heire apparaunt to his father.

¶ Inquire of these two cases of Endowment at the Church doore, if the wyfe at the time of the death of her husband passe not the age of nine yeres, if she shal haue such Dower or no.

¶ And note well, that in all cases where the certayntie appeareth what landes or tenements the wife shal haue for her Dower, the wyfe may enter after the death of her husband without assignement of anie other. But where the certeyntie appeareth not, as to bee endowed of the thirde part, to haue in seuerall, or to bee endowed of the halfe after the custome, to holde in seueraltie: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband, because it is not knowen before the assignement what peeces of landes or tenementes shee shall haue for her dower. But if there be two Joinctenauntes of certayne landes in fee, and the one alyeneth that that to him pertayneth and belongeth, to another in fee, whych

, taketh

tadeth a wife, and after dyeth. In this case the wyfe for her dower shall haue the thirde part of the halfe that her husband purchased, to holde in common, and occupie in common as her part amounteth, with the heire of her husband, and with the other Joyntenaunt whych alyeneth not, for that in such case her dower may bee assigned by metes and bounder.

¶ And it is to vnderstād, that the wife shal not be endowed of landes or tenementes that her husband joyntly held with another at the time of his death. But where hee holdeth in common otherwise it is, as in the case aforesaide. And it is to witte, that if the tenant in taile endowe his wyfe at the church doore as it is aforesaid, ỹ shal serue for litle or naught to the wife, for that that after the death of her husband the issue in the tayle may enter vpon the possession of the wife, and so may he in the reuersion if there be no issue in the tayle alyue.

¶ Also if a man seised in fee simple being vnder age, endowe his wyfe at the Church doore and dieth, and the wife entreth. In this case ỹ heire of her husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, & the sonne within age endowe his wife of his fathers assent the father then being of full age.

¶ Also there is another Dower whych is called Dowment de la Plus beale. And that is in suche case that a man is seysed

of xl. acres of land, and hee holdeth xx. of th
land xl. acres of one man by knyghts seruice,
and the other xx. acres of an other in socage,
taketh a wife, & hath issue a sonne, and dyeth
his sonne being within the age of 14. yeares
and the lord of whom the land is holden b
knyghtes seruice entreth into the xx. acres o
land holden of him, and them hath and occu
pieth as warden in chiualry during the chil
des nonage, and the childes mother claym
in the remnant, and it occupieth as gard
warden in Socage, If in this case the wyf
bryng a writte of Dower agaynst the war
den in chiualrie, to bee endowed of the rem
ments holden by knights seruice in the kings
Court, or in any other court, the gardeine
chiualry may pleade in such case all the mat
ter, and shew how the wife is warden in so
cage as is aforesayde, and prayed that it ma
be adiudged by the Court that the wife doo
her selfe of ye most part, called Plus beale,
the tenementes that she hath as warden in so
cage after the value of the third part that s
claymeth to haue of the tenementes in ch
ualrie by her writte of dower, and if the wo
may not gaine say it, then the iugement sha
be made, that the warden in chiualry shal ho
the landes holden of him during the nona
of the childe quite from the woman &c. A
that the woman may endow her selfe of t
most faire part of the landes that shee hath
warden in socage to the value of the th

pa

part that the warden in chiualry hath &c.

And after such iudgement geuen, the wife may take her neighbours and in their presence endow her selfe by meetes and boundes of the faireſt part of the tenementes that shee hath, as warden in socage, to the value of the third part of the landes that the warden in chyualry hath, and that to haue and holde for terme of her life. And such dower is called dower of ye faireſt part, or de pluis beale.

¶ With this agreeth Ffleta. lib. Ed. 3. c. 4. But there it was sayd, that after the tyme that the heire come to his full age, the wyfe shall haue a new action of dower against the heire, to be endowed of the thirde part of all that the man died seised. And note wel that such dowment may not be, but where the iudgement is geuen in the kings court, or in some other court. And the wife may doe this for saluation of ye estate of the warden in chiualry durinne the nonage of the child. And so ye may see fiue manner of dowers, that is to say, dower by the common lawe, dower by custome, dower at the church doore, dower of the father assent, and dower of the moste faire. And remember that in euery case where a man taketh a wife seased of such estate of tenementes &c. soe that the issue that he hath by his wife may by possibilitie inherite the same tenementes of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hee shall haue the same tenementes by the curtesy of Eng-

land & other wife not.

¶ And alſoin euery caſe where the wife taketh an huſband ſeyſed of ſuch eſtate of tenementes &c. ſo that by poſſibility it may happe the wife to haue ſome iſſue by her huſbande, & that the ſame iſſue may by poſſibility inherite the ſame tenementes of ſuch eſtate that the huſband had as heire to his father, of ſuch tenementes ſhee ſhall haue her dower, and otherwiſe not. For if the tenementes be geuen vnto a man & to the heires that he getteth on hys wifes body, in ſuch caſe the wife hath nought in the tenementes, and the huſband hath eſtate but as donee in ſpecial taile. Yet if ỹ huſbande die without iſſue, the ſame wife ſhalbe endowed of the ſame tenementes, for that the iſſue ỹ ſhe by poſſibilitie might haue had by the ſame huſbande may enherite the ſame tenementes. But if the wife deceaſe liuinge ỹ huſband, & after taketh an other wife, the ſecõd wife ſhal not be endowed in this caſe. Caſus qui ſupra.

¶ A man was ſeiſed of certaine landes, and tooke wyfe and after alyened the ſame landes wyth warrantie, and after the feoffour and feoffee died, and the wife of the feoffour bringeth an actyon of dower againſt the iſſue of the feoffee, and ſhe vouched the heire of the feoffour, and bringe the voucher and not termined the wife of the feoffee bringeth an action of dower againſt the heire of the feoffee, and demaundeth the thirde parte of al that her huſband was ſeyſed, and ſhoulde not demaund

maunde the third part of those two partes ꝑ her husband was seised, it was audged ꝑ she should haue no iudgement vntil the tyme ꝑ the other plee were determined.

And also note that Vauisour saith, that ꝑ a man be seised of landes, and committeth felony, and flieth, and after is attainted, ꝑ wife shal haue good action of dower against ꝑ feoffes. But if it be escheted vnto the king, or vnto the lord, she shal haue no writ of dower. And so ses ꝑ diuersity, & enquire the cause.

¶. Tenant for terme of life.

TEnaunt for terme of life is, where a man letteth landes or tenementes to a man for terme of life of the lessee, or for terme of lyfe of an other man. In such case the lessee is tenaunt for terme of life. But by common language he that holdeth for terme of his owne life, is called tenaunt for terme of lyfe, and hee that holdeth for terme of an other mans lyfe, is called tenaunt for terme of an other mans life. And is to be vnderstande, that there is feoffour and feoffee, donour, and donee, lessour & lessee. The feoffour is properly where a man enfeoffeth an other in any landes or tenementes in fe simple, hee that maketh the feoffement is called feoffour, and he vnto whom ꝑ feoffement is made, is called feoffee. And the donour is properly where a maune geueth certaine landes or tenementes to an other in

the taile, he that maketh the gift is called donour, and he to whom the gift is made is called donee. And lessour is properlie where a man letteth to an other certayne landes or tenementes for terme of life, for terme of yeres, or to hold at will, he that maketh the lease is called lessour, & he to whom the lease is made is called lessee, and euery one that hath estate in landes or tenementes for terme of his owne life, or for terme of anothermans life, is called tenaunt of freeholde. And none of lesse estate may haue freehold, but they of greater estate may haue freeholde, for tenaunt in fee simple hath freehold, and tenant in the taile hath also freehold.

Tenant for terme of yeres.

TEnant for terme of yeres is, where a man letteth landes or tenementes to an other for terme of certayne yeres after the number of yeres that is accorded betweene the lessour and the lessee, and when the lessee entreth by force of the lease, then is he tenant for terme of yeres. and if the lessour in such case reserue to him a yerely rent vpon such lease, hee may distreine for to distraine for the rent in the tenementes letten, or else hee may take an action of debt for the arrerages against the lessee. ¶ In such case it behoueth that the lessour be seised in the same tenementes at the time of his lease, for

it is

it is a good plee for the lessee to say, that ỹ lessour hath nothinge in the tenements at ỹ time of the leale, except the leale bee made by fine indented, in which case then such plee lieth not for the lessee to plede.

¶ And it is to be vnderstand, that in a lease for terme of yeres by deede or without deede, it needeth no liuery of seisin to be made to the lessee, but he may enter whensoeuer he will by force of the same lease. But of feffments made in the countrey, or gifts in the tayle, or leases for terme of life in such cases where freehold shall passe, if it be by deede or without deede, it behoueth to haue liuery of seisin &c. But if a man let lands or tenements by deed or without deed for terme of yeres, the remaynder ouer to an other for terme of life, or in the tayle, or in fee, then in such case it behoueth that the lessee make liuery of seisin to ỹ lessee for terme of yeres, or elsewhere shall nothinge passe to them in the remaynder, though the lessee enter in the tenements. And if the tenour in such case enter before any such liuery of seysin made vnto him, then is the freehold in reuersion in the lessour. But if he make any liuery of seisin vnto the lessee, then is ỹ freehold in ỹ fee to them in the remaynder after the forme of the graunt, & will of the lessour.

¶ And if a man will make a feoffement by deede or without deede of landes or tenementes that he hath in many townes in one shere, if the liuery of seysin be made in one

parcell

parcell of the tenementes in one towne in the name of al, it sufficeth for al the other landes or tenementes comprehended in the same feoffement, in al other Townes in the same shere. But if a manne make a deede of settlement of landes or tenementes in diuers sheres, there it behoueth him to haue in euery shere a liuery of seisin. And in such case a man shall haue by the graunt of an other fee simple, fee taile, or freehold, without liuery of seisin. And if two men be, & ech of them is seysed of a quantitie of lād within one shire, & the one graunteth his land to the other in exchaunge for that lande that the other hath, and in the same maner the other graunteth his land vnto the first graūtor in exchang for the lād that the first graūtor hath: In this case either may enter in the others landes so taken in exchāge without any liuery of seisin. And such exchange made by wordes of tenemēts lyeng in the same shere without any writing is good inough. And if the landes or tenements bee in diuers shires, that is to say, if that the one haue his in one shere, & the other haue in an other shere, it behoueth to haue a deede indented made betweene them of such exchange.

¶ And note, that in exchaunge it behoueth, that the estates that both parties haue in the lāds so exchaunged be equal. For if the one willeth & graunteth that the other shal haue his lande in the tatle for that land that he hath of the grāt of the other in fee simple, though the other agree to that, yet this exchange is not good, for

that

that the estates be not euen.

¶ In the same maner it is where it is graū-ted and agreed betweene them, ꝑ the one shall haue in the one land fee taile, & the other shall haue in the other land but terme of life: Or if one shal haue in the one lande fee tayle gene-ral, and the other in the other land fee taile es-pecial &c, So alwaie it behoueth ꝑ in exchang the estate of both parties be euē, that is to say, if that one haue fee simple in the one lande, ꝑ the other shal haue such estate in the other lād and if the one haue fee tayle in the one lande, then the other shal haue likewise in the other lande. Et sic de aliis statibus. But it is no-thinge to charge of the euen value of ꝑ lands, for though that the land of the one is so much more in value then the lande of the other, thys is nothing to purpose, so that the estates made by the exchaunge bee euen, and so in exchaūge be two graūtes, for euery part graunteth his lande to the other in exchaunge, and in ech of their graūtes mentyon shalbee made of the exchaūnge.

¶ And if a man let land to another for terme of yeres, though the lessour die before the lessee enter into the tenements, yet may hee enter in to the tenements after the death of the lessour, for that, that the lessee by force of the leale hath right incontinent to haue the tenementes af-ter the fourme of the lease. But if a manne make a deede of feoffement vnto another, and a letter of attorney to a man to deliuer to him

seysin

seisin by force of the same deed, yet if the iuery of seisin be not made in the life of him that made the deede, it auaileth not, for that the other hath no maner of right to haue the tenements after the purport of the deede before the iuery of seisin &c. And if no iuery be made then after the death of him that made the deed y right of such tenements is mooeuently in his heire or in some other. Also if tenements bee let to a man for terme of halfe a yere, or for terme of a quarter of a yere &c. In such case if the lessee make waste, the lessour shall haue against him a writ of waste, and the writ shall say: Qui tenet ad terminum annorum, But hee shal haue a speciall declaration vpon the troth of this matter, and the plee shall not abate the writ for that that he may haue no other writ vpon the matter. An. 7. Hy. 7. fo. 1.

Tenant at will.

TEnaunt at will is, where landes or tenements be lette by a man vnto another. To haue and to hold to hym at the will of the lessour by force of which lease the lessee is in possession. In such case the lessee is called tenant at will, for that he hath no certeine sure estate, for their lessour may put him out at what time it pleaseth him, yet if the lessee sow the lande, and the lessour (after the sowinge and before that his graines be rive) put hym out, yet shall the lessee haue his graines, and shal haue free egresse and regresse to reape and to carrie

his

his grasnes, for that he will not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeres before the end of his terme sowerth the land, and the terme is ended before that his graines be ripe. In this case the lessor, or he in the reuersion shall haue the grenes, for that the tenaunt knewe well the certeine of his terme, and when his terme shoulde be ended.

¶ Also if an house be let to a man to holde at will, by force of which the lesse entreth into the house, within which house he bringeth his housholde stuffe, and after the lessour putteth him out, yet shall hee haue free entre, egresse, and regresse in the same house by reasonable time to cary his goods and houshold stuffe. And if a man be seised of a house in fee simple, fee taile, or for terme of life, the which hath certeine goodes within the same house, and maketh his executours and deceaseth, whosoeuer after his death hath the house, yet shall his executors haue free entre, egresse, and regresse to carry out of the house the goodes of their testatours by a reasonable time.

¶ Also if a man make a deede of feoffement vnto another of certaine lande, and deliuereth to him the dede, but no liuery of seisin. In this case he to whom the deede is made may enter into the lande, and hold and occupie it at the will of him that made the deede, for that, ỹ it is proued by the wordes of the deede, that it is his will that the other shal haue the land. But

he

he that made the deede, may put him out when he will.

¶ Also if an house be let to holde at will, the lesse is not holden to sustayne or repaire the house as tenaunt for terme of yeares is holden to do. But if the lesee at will make voluntarie waste, as in pulling downe of houses, or in cutting or felling of trees: It is sayd that the lessour shal haue for that against him an action of trespas. As if I deliuer to a man my sheepe to dung or marle his land, or mine oxen to ayre his land, and he slayeth my beastes, I may well haue an actio of trespas against him notwithstanding the deliuery.

¶ Also if the lessour vpon such lease at will reserue vnto him a yerely rent, hee may distreine for the rent behinde, or to haue to, that an action of debt at his owne choise. H.6.R. 2. in a Replevin.

¶ Tenant by copy of court roule.

TEnant by copy of court roule is, as if a mā bee seysed of a manner within which manner there is a custome, and hath been vsed in time out of minde, that certayne tenauntes within the same mānor haue vsed to haue landz or tenementes, to holde to them and to their heires in fee simple, or in fee tayle, or for terme of life &c. at the will of the lorde, after the custome of the same manner, and such tenaunt may not alyen the land by deede, for then the

the Lord may enter as in a thing forfayt to him. But if he will alien his lande to another, him behoueth after some custome to surrender the tenementes in some court &c. into the Lordes handes to the vse of him that shall haue the estate in such fourme, or to such effect. Ad hanc curiam venit A de B. et sursum reddidit in eadem curia, vnum messuagium &c. in manus domini ad vsum E. de A. & heredum suorum, vel heredum de corpore suo exeunt, vel pro termino vite sue &c. Et super hoc venit predictus E. de A & cepit de domino in eadem curia messuagium predictum &c. habendum & tenendum sibi & heredibus suis, vel sibi & heredibus de corpore suo exeuntibus, vel sibi, ad terminum vite sue, ad voluntatem domini secundum consuetudinem manerij faciend & reddendo inde redditus, debit seruitia, & consuetudines inde prius debita, et de iure consueta, et dat domino de fine &c. Et fecit domino fidelitatem &c. That is to say, A. of B. commeth vnto this court, and surrendreth in the same court a mese &c. into the handes of the Lord, to the vse of E. of A. and his heires, or to the heires issuing of his bodie, or for terme of his life &c. And vpon that commeth the foresaied E. of A. and taketh of the lord in the same court, the foresayde mese &c. To haue & to hold to him & to his heires, or to him & to the heires issuing of his bodie, or to him for terme of life, at the Lordes will after the custome of the manner, to do & yelde

there-

therefore rents, dettes, seruices, and customes therof before due and accustomed &c. and geueth the Lorde for a fine &c. and maketh vnto the Lorde his fealtie &c. And such tenants bene called tenaunts by Copy of court roule, for that they haue none other euidence concernynge their tenementes but the copies of the court roules, and such tenaunts shall not implede, nor be impleded of their tenementes by the kinges writte, but if they will implede other for their tenemēts, they shal haue a plait made in the court of the Lord in such forme, or to such effect. A. de B. queritur vers' C. de D. de placito terre. videlicet de vno messuagio, quadraginta acris tre, quatuor acris prati &c. cum pertinentijs. Et facit protestationem secut querelam istam in natura breuis domini Regis assise nouę disseisine ad communem legē, vel breuis domini Regis assise nouę disseisine ad communem legem.

That is to say, A. of B. complaineth against C. of D. of a plee of land, that is for to say of a mese and xl. acres of land, fower acres of medowe &c. with the appurtenantes, & maketh protestation to sue his playnt in nature of the kinges writ of assise of the death of his antecessour, at the common lawe, or by writ of our soueraigne lord the king of assise of Mouel disseisin at the common lawe, or in nature of some other writ &c. pledges to prosecute &c. &c. And though ꝑ some such tenants haue inheritance after the custome of ꝑ manner, yet

they

they haue none eſtate but at the Lords will, & after the courſe of the common lawe, for it is ſaide, if the lord put them out, they haue no other remedy but to ſue vnto the lord by petition. For if they had any other remedy, they ſhould not be ſayd tenants at the lordes will after the cuſtome of the manner, but the lord will not breake the cuſtome for reaſonable in ſuch caſes. But Brian chiefe Juſtice ſayeth, that his oppinion alwaies hath bene, and alwayes ſhalbee, if ſuch a tenaunt by cuſtome (payrag his ſeruices) bee caſt out by the lord, he ſhal haue an actio of Treſpas againſt him. M.21.E.4. And likewiſe was the oppinion of Danby chiefe Juſtice. M.7.E.4. for he ſayeth that the tenaunt by the cuſtome is aſwel inherite to haue his land after the cuſtome, as well as hee that hath franktenement by the common lawe.

TEnauntes by the yarde be in ſuch nature as tenauntes by copie of court roule. But the cauſe for which they bee called tenauntes by the rodde, or yarde is, for that when they will ſurrender their tenementes into the Lordes hand to the vſe of an other, they ſhall haue a lytle yard or rodde by the cuſtome and vſe in their handes, which they ſhall deliuer vnto the ſteward or bayliſe, after the cuſtome and vſe of the Mãner. And he that ſhal haue the land, ſhall take the ſame land in the court, & his taking ſhalbe entred in the roll. And the ſteward or the bayliſe, according to

the custome, shall deliuer vnto hym that ta
keth the land, the same yard or another yar
in the name of seysin. And for this cause the
bee called tenauntes by the yarde. But the
haue none other euydence but copie of th
court roule.

¶ And also in diuers lordshippes and ma
nours there is such a custome if such a tenan
that holdeth by the custome will alyen hys
landes or tenementes, hee may surrender hys
landes vnto the Baylife, or to the Reeue, o
to two sad men of the same lordship, to the vs
of him that shal haue the land, to haue in fe
simple, fee taile, or for terme of life &c. and a
that shall bee present at the next court. An
then hee that shall haue the land by copie o
court roule, shall haue the same land after th
entent of the surrender. Also it is to weete
that in diuers lordships and diuers maners
there be made diuers customes in such cases
as to take tenemẽts, & as to yelde, and as tou
ching other things and customes to bee don
& al that that is not against reason, may wel
be admitted and allowed. And such tenaunt
that hold after the custome of a seignioury, o
after ỹ custome of a mãner. though they hau
estate of inheritaunce after the custome of th
lordship, or of the mãner, yet because they hau
not any freehold by the courle of the cõmon
lawe, they be called tenaunts by base tenure
¶ And diuers diuersities there be betweene
a tenant at will which is in by the lelle of his
lessour

lessour by the course of the common lawe, and tenant after the custome of the manner in the fourme aforesaid. For tenaunt at will after the custome may haue estate of inheritance as it is aforesaid at the Lordes will after the custome and vsage of the manner: But if a man haue lands or tenements within such manner or lordship where such custome hath been vsed in the fourme aforesaied, and will let such landes or tenementes to another, to haue and to holde to him and to his heires at the will of his lessour, these wordes, to the heires of the lessee be voyde, for this is the cause, if the lessee die and his heire entre, the lessour shall haue a good action of trespas agaynst him, but not so against the heire of the tenant by the custome in ame case &c. for that the custome of the manner in some case may help him to barre his Lorde in an action of trespas.

¶ Also tenant by the custome in some places ought to repaire and sustayne the houses, and the other tenant at will ought not. Also one by the custome shal do reuitte & the other not. And diuers other diuersities there be betweene them.

¶ Thus endeth the first booke.

HOmage is ỳ moſt honorable ſer-
uice & moſt humble ſeruice of re-
uerence that a franketenant may
do to his Lord. For whē the te-
nannt ſhal make homage to hys
Lord, he ſhall diſcend, and hys head vncouer-
red, and his Lord ſhall ſit, and the tenaunt
ſhal kneele before him on both his knees, and
hold hys handes iointly together betweene ỳ
handes of his Lord, and ſhall ſay thus. I be-
come your man frō this day forward of lyfe
and limme, & of earthly worſhip, & vnto you
ſhal be true & faithful, & beare you faith of the
tenements that I clayme to hold of you, (ſa-
uing the faith ỳ I owe vnto our ſoueraygne
Lord the king) And then the lord ſo ſytting
ſhal kiſſe him.

But if an Abbot, or a Priour, or any other
man of religion ſhall make homage vnto hys
Lord, hee ſhall not ſay, I become your man
for that he hath profeſſed himſelfe onely to be
Gods man. But he ſhall ſay thus, I do you
homage, and vnto you ſhal be trew and faith-
full, and beare you fayth for the tenementes
that I clayme to hold of you. Saiyng the
fayth that I owe vnto our ſoueraygne Lord
the king.

¶ Alſo if a woman ſole ſhall make ho-
mage vnto her Lord, ſhee ſhall not ſay, I
become your woman, for that is not conue-
nient for a woman to ſay that ſhee ſhall be-
come the woman to any but onely to her hus-
band

band when she is wedded. But she shall say I make vnto you homage, and to you shalbee true and faithful, & shal bere you faith of the tenementes that I holde of you, sauinge the faith that I owe to our soueraigne Lord the kynge.

But if a man haue seuerall tenancies which he holdeth of seuerall Lordes, that is to saye euery tenancy by homage. Then when he maketh homage vnto one of his Lordes, he shall say in the ende of his homage. Sauinge the faith that I owe vnto the kinge and vnto my other Lordes.

¶ And note well that none make homage but suche as haue estate in fee simple, or in fee tayle in his owne right or in an other mannes right. For it is a ground in the lawe, that hee ꝑ hath estate but for terme of life, shall make none homage, nor take none homage.

For if a woman haue landes or tenementes in fee simple or in fee taile, which shee holdeth of her Lorde by homage, and taketh one husband and hath issue, then the husband in the life of the wife shal make homage. for that hee hath title to haue the lande by the curtesye, if he suruiue his wife. And also he holdeth in ꝑ right of his wife. But afore issue betweene them, the homage shalbee made in both their names. But if the wife decease before homage made by the husbande in the wyues life, and the husbande holdeth himselfe in as tenaunt by the curtesy, he shall make no homage vnto

his lord, for that he hath then none estate but for terme of life, More shalbe said of homage in the tenure of homage auncestrel.

¶ Fealtie.

FEaltie is as much to say as fidelitas in latine, and when a franktenaunt shall make fealty vnto the Lorde, hee shal hold his right hand vppon a booke, and shal say thus. Heare you this my lord, that I vnto you shal be faithful and true, and beare you faith of the lands or tenements that I claime to holde of you, and truely to you shall doe the customes & seruices y I ought to do vnto you at termes assigned, as God me helpe & al his saincts, & then hee kissed the booke, But hee shall not kneele when he maketh his fealty, nor shal make such humble reuerence as is aforesayde in hõage. And great diuersity there is had betweene makinge of fealty, & of homage. For hõage may not bee made but to the Lord himselfe. But the stewarde of the Lordes Court, or the bailiffe may take fealty for the Lorde.

¶ Also tenaunt for terme of life shall make fealtie, and yet he shal make none homage, and diuers other diuersities there bee betweene homage & fealty.

¶ Also a man may see a good note Anno 15. E. 3. where and how a man and his wyfe made homage and fealty in the cõmon banke which is written in such fourme. Note that

that John Lewknor and Elizabeth his wife made homage vnto William Thorp in thys manner. The one & the other held iointly their handes betwene the handes of William Thorp, & the husband said in this wise, wee vnto you make homage. and beare you faith for ỳ landes that wee holde of you your conuisour which hath graunted you our seruices in B. & in C. & the other townes &c. against al men (sauing ỳ faith ỳ we owe vnto our soueraigne Lorde the King & to his heirs, & to our other lords) & ỳ one & the other kissed him. And after they made fealty, & the one & the other held their handes together vpon a booke, & the husbande said these wordes, & both kissed ỳ booke, more shalbe said of fealty in the tenure of socage, & in the tenure of franke almoigne, & in the tenure of homage auncestrel.

¶ Escuage.

ESCuage is called in latin Scutagiũ, that is to say seruice of shield. And such a tenant that holdeth his lande by escuage, holdeth by knightes seruice. And also it is cõmonly sayd that some holde by a fee of knightes seruice, & some by ỳ halfe fee of knightes seruice &c. And it is said ỳ when the king maketh a voiage roial into Scotlãd for to subdu ỳ Scots, he that holdeth by a fee of knightes seruice, behoueth to be with the king by xl. daies well and conuenably arrayed for the warre. And

Likewise he that holdeth his lande by the halfe of a fee by knightes seruice ought to be with the king by xx. dayes, And he that holdeth his land by the fowerth part of a fee by knightes seruice, him behoueth to be with the kinge by x. dayes. And soe after the quantitie, hee that hath more, to do more, and he that hath lesse to do lesse. But it appeareth by the plees & argumentes made in a good plee vppon a Writ of Detinue of an obligation brought by one Henry Gray Anno 7. E. 3. that it needeth not to him that holdeth by escuage to goe him selfe, if hee will finde an able person for the warre contenable arrayed for the warre, to goe with the kinge, & that seemeth good reason. For it may be that he that holdeth by such seruice is sicke in such wise that he may not go nor ride.

And also an Abbot or any other man of religion, or a woman sole that holdeth by such seruice, ought not in such case to goe in proper person. And sir William Herle that time chiefe Iustice of the common place, said in the sayd plee that Escuage shall not bee graunted but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee if these xl. dayes shalbee accompted from the day of the muster of ỹ kinges hoste made by the commons & by the kinges commaundement: Or els from the day ỹ the kinge first entreth into Scotlande &c. therefore inquire of this matter.

¶ And after such voyage into Scotlande it

it is commenly sayd that by the auctholity of Parliament the escuage shalbe set and put in certaine, that is for to say, a certayne summe of money how much euery one ỹ holdeth by a whole fee of knightes seruice which was not in his owne proper person, nor none other for him with the kinge, shall pay vnto the Lorde of whom he holdeth his lande by escuage, As put case that it was ordeyned by auctholitie of parliamẽt ỹ euery on ỹ holdeth by a whole fee by knightes seruice which was not with ỹ king shal pay to his Lorde xl.s. Then he that holdeth by the halfe of a fee by knightes seruice, shall pay vnto his Lord but xx.s. and so who more more: who lesse lesse. And some tenaunts holde, ỹ if escuage runne by auctholitie of parliament to any summe of money, ỹ they shal pay but the halfe of that summe, and some but the fowerth part of that sume, But because the escuage ỹ they shal pay is not certeine for that it is at no certeine what ỹ parliamẽt wil assesse ỹ escuage, they holde by knightes seruice. But otherwise it is of escuage certaine of which shalbe spoken of in the tenure of socage.

And if a man speake generally of Escuage, it shalbee vnderstande by the common speache of Escuage not certayne which is knights seruice. And such escuage drawyth vnto him homage. and homage drawyth vnto him fealtie, for fealtie is incydent to euery manner of seruice, but to the tenure of frank=

frank almoigne as it shalbee sayd hereafter in the tenure of frankalmoigne. So as hee that holdeth by escuage, holdeth by homage, fealtie, and escuage.

¶ And it is to be vnderstand, that when escuage is so sessed by auctoritie of parliament, euery Lorde of whom the lande is holden by escuage, shal haue the escuage so sessed by the parliament, because it is vnderstande by the lawe that at the beginninge such tenementes were geuen by the lordes to holde by such seruices to defende their Lordes as well as the kinge, and to set in quiet & rest their Lordes and the Kinge of Scottes aforesaid. And for that such tenementes came first of the Lordes, it is reason that they haue ỹ escuage of their tenements.

¶ And the Lords in such case may distreine for the escuage so assessed, or they may haue ỹ kings writs directed vnto the Shirifes of ỹ shires to leuie such escuage for them, as it appeareth by the Register fo. 88.

¶ But of such tenauntes that holde of the kinge by escuage which were not with ỹ king in Scotlande, the kinge him selfe shal haue ỹ escuage.

¶ Item in such case aforesaide, where the kinge maketh a voyage royall into Scotlande, and the escuage is assessed by parliamẽt, if the Lorde dystreine his tenaunt that holdeth of him by seruice of a whole knightes fee, for the escuage so assessed &c. And the tenaunt pleadeth

and

and will auerre that he was with the king in Scotlande .xl. dayes, and the Lorde will auerre the contrary, it is ſayd that it ſhalbee tried by the certification of the Conſtable of ỹ kinges holt in writinge vnder his ſeale which ſhalbe ſent to the Iuſtices.

¶ Homage, fealtie, and eſcuage.

TEnure by homage, fealty, & eſcuage, is to hold by knightz ſeruice, and it draweth vnto him warde, mariage, & reliefe. For when ſuch a tenaunt dyeth his heire male beinge vnder age of xxi. yere, the lorde ſhal haue the lande holden of hym vnto the age of the heire of xxi. yere, which is called plaine or full age, for that ſuch an heire by the vnderſtandinge of ỹ lawe, is not able to do knightes ſeruice before the age of xxi. yere.

¶ And alſo if ſuch an heire bee not maryed at the time of the death of his aunceſter, then the Lorde ſhall haue the warde and maryage of him. But if ſuch a tenaunt dye his heire female beinge of the age of fourteene yere or more, then the lorde ſhall not haue the warde neyther of the lande nor of the bodie, for that a woman of ſuch age may haue an huſbande able to doe knyghts ſeruice. But if ſuch an heire female bee within the age of fourteene yere and not maryed at the tyme of the death of her aunceſter, then the Lord ſhall haue the warde

ſward of the lande holden of hym tyll the age of ſuch an heire female of xvi. yeres. For that it is geuen by the ſtatute of Weſt. 1. cap. 12. that by two yeres next followynge the ſayde xiiij. yeres, the Lorde may tender a conuenient mariage without diſperaging of ſuch an heire female. And if the lord doe not tender her ſuch mariage within the ſaid two yeres, then ſhee at the end of the ſaid two yere may enter and put out the lord. But if ſuch an heire female be maried within the age of 14. yeres in the life of the auncelter, and the auncelter die, ſhee beinge within the age of xiiij. yere, the lord ſhall haue but the ſward of the land til an end of xiiij. yere of age of ſuch an heire female, And then her huſband and ſhee may enter into the lande and put out the Lorde, for this is out of the caſe of the ſtatute, In ſo much that the Lord cannot tender mariage to her that is maried &c. For before the ſaid eſtature of Weſtm. 1. ſuch illue female was within age of xiiij. yere at the tyme of the death of her auncelter, and after ſhe had accompliſhed the age of xiiij. yere without any tender of mariage of her by the Lorde, ſuch an heire female then myght enter into the lande and put out the Lorde as it appeareth by the reherſall, and by the wordes of the ſame eſtatute. So that the ſayd ſtatute was made in ſuch caſe all for the aduauntage of the Lorde as it ſeemeth. But yet that at all times it is vnderſtande by the wordes of the

ſame

ſame eſtatute, that the Lord ſhall not haue the two yere after the xiiij. yere as it is afore-ſaid.

¶ And note well that the full age of their male and female after the common ſpeech, is ſayd the age of xxi. And the age of diſcretion is ſayed the age of xiiij. yeares, for a childe at ſuch age whych is wedded within ſuch age to a woman may agree to the mariage or diſagree.

¶ And if the wardeine in chiualrie marie once his ward within the age of xiiij. yeare, & after the age of xiiij. yeres he diſagreeth to the mariage. It is ſayd by ſome folke that the childe is not holden by the law to bee maryed another time by hys wardeine, for that the wardein had once the maryage of hym, and therefore he was out of his ward as concerning the ward of his body. And when hee had once the mariage of hym, and therefore was out of his ward, he ſhal no more haue the mariage of hym. In the ſame maner it is if the wardeine marie him and the wife die the childe being within age of xiiij. yeares, or xxi. yeares. And that the childe may diſagree to ſuch mariage whē he cōmeth to thage of xiiij. yere it is proued by the wordes of the ſtatut of Merton cap 6. that ſayeth thus. De dominis qui maritauerint illos quos habēt in cuſtodia ſua villanis, & aliis ſicut burgenſis vbi diſparagent, ſi tales homēs fuerint infra 14. annos, & talis ſtatus qō matrimonia cōſentire non

non poſſint, tunc ſi parentes illius conquerant, dominus rie amittat cuſtodiam illam vſq; ad etatem heredis. Et omne commodum qđ inde receptum fuerit conuertatur in commodū heredis infra etatem exiſtentis ſecundum diſpoſitionem parentū, ꝓpter dedecus ei impoſitū. Si autem ſuerit infra. xiij. annoꝝ, & vltra quod conſentire poterit, et tali maritagio conſenſerit, nulla ſequatur pena. And ſo it is prouided by the ſame ſtatute ꝑ no deſperagement ſhalbe but where that he ꝑ hath the ward marryeth hym within the age of xiij. yeare.

¶ Alſo it hath bene a queſtion how theſe wordes ſhould bee vnderſtand. Si parentes conquerantur &c. And it ſeemeth vnto ſome that conſidering the ſtatute of Magna charta Cap. 6. that willeth that heredes maritentur abſq; diſparagatione &c. vpō which this ſayd ſtatut of Merton vpon this point is grounded as it ſeemeth, and in ſo much that it was neuer ſene that any action was brought vpō the action of Merton for ſuch deſperagynge againſt the wardeine, and if ante action may be taken vpon ſuch matter, it ſhalbe taken by common preſumption before this tyme, or at ſome time to be put in vre, that theſe wordes ſhalbe vnderſtand in ſuch manner. Si parentes conqueramur. i. Si parentes inter ſe lamentantur, which is as much to ſay that yf the cosins of ſuch a childe haue cauſe to make lamentation and complaint among them for the ſhame done to their couſin ſo diſperaged

which

which is in a maner a shame to them al, then may the next cosin to whom the heritage may not discend, enter and put out the Wardeine in chiualrie. And if hee will not, another cosin of the chyldes may do it, & hee to take the issues and profites vnto the vse of the childe, and of that yeld the childe accompt when hee commeth vnto his full age. Or els the child him self may enter himselfe & put out the Wardein &c. sed quere de hoc.

¶ Also there is many other diuers disperagyniges, which be not specified in the same statute. As if the heire that is in ward be maried vnto one that hath but one foote, or one hand, or els deformed or lame, or having an horrible disease, or els a great and continuall infirmitie, or if the heire male be maried to a woman passed childe bearing. And manie other causes of disperagynge there be, but inquire for them, for it is good matter to learne. And of heires males that bee within age of xxj. yere after the death of their ancestors vn maried: In such case the lorde shall haue the mariage of such an heire, and haue space and tyme to tender to hym conuenable maryage without disperaging within the same time of xxj. yere.

¶ And it is to witte, that the heire in such case may chose if hee will bee maryed or no. But yf the Lorde which is called Wardeine in Chiualrie tender a conuenable maryage to such an heire with-

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in the age of xxj. yeare without diſperagyng, and the heire refuſe, and marrie not himſelfe within the ſame age: Then the ſaied wardein ſhall haue the value of the marriage of ſuch an heire. But if ſuch an heire male mary himſelfe within the age of xxj. yeares, againſt the will of the wardeine in chiualrie: Then ſhall the warden haue double the value of that mariage by the force of the eſtatut of Merton aforeſaide, as in the ſame ſtatute is more fully compaſſed.

¶ Alſo diuers tenants hold of their lordes by knightes ſeruice, and yet they hold not by eſcuage, nor pay no eſcuage as they that hold their landes by caſtleward, that is to ſay, to keepe a towre of a caſtle, or a gayle, or ſome other place by reaſonable warning, when their lordes heare tel that enemies will come, or bee come into Englād. And in many other caſes a man may hold by knightes ſeruice, and yet he holdeth not by eſcuage, nor paieth no eſcuage as ſhalbee ſaied in the tenure of Graund ſerieantie. But in all caſes where a man holdeth by knyghts ſeruice, ſuch ſeruices drawe to the Lord ward, and mariage.

And if a tenant that holdeth of his lorde by ſeruice of an whole knights fee die, his heire being at full age of xxi. yere, his heire ſhall pay vnto his lord C.s. for a reliefe, & he that holdeth by the halfe fee, ſhal pay l.s.

¶ Alſo if a man hold his land of his lord by the ſeruice of two knightes fees, then the heire

heire at full age at the tyme of the death of his auncester, shall pay to his lord ten pound for reliefe.

¶ Also if there be graundfather, mother, & sonne, and the mother dyeth hyeng the father of the sonne, and after the graundfather which held his land by knightes seruice dyeth seised, and the land descendeth to the sonne of ỹ mother, as heire to the graundfather whych is within age. In such case the lord shall haue ỹ ward of the land, but not the ward of ỹ heire. For that none shalbe in ward of his body lyeng his father, because the father during his lyfe, shal haue the mariage of his heire apparant, & not the Lord. Otherwise it is if ỹ father bee dead liuing the mother, where ỹ land holden in chiualrie, descendeth to the sonne on the fathers side &c.

¶ Also if a man be seysed of land wich is holden by knightes seruice, & maketh a feoffement in fee to his vse, and died seised to ỹ vse of his heire within age, & no will by him declared, the Lorde shall haue a writte of ryght, of the body and the lād. Likewise if the tenāt had died seised of the demesne. And if the heire bee of full age at the death of his auncester. In such a case he shal pay reliefe. Likewise if hee had bene seised of the demesne, and that is by the statute of An. 4. H. 7. cap. 7.

¶ Also there is a wardē in right in chiualry, & a wardē in dede in chiualry. Wardē in right in chiualry, is where the Lord because of hys

lordship is seised of the ward of the land, & the heire vt supra, Wardein in deede in chualry is where the Lorde in such case after his seisin graunteth by deede or without dede the ward of the land or of the heire, or of both, to another man, by force of which graunt the graūtee is in possession, then is the graunice called Wardein in deede &c.

¶ Tenure in socage.

TEnure in socage, is where the tenaūt holdeth of hys Lorde his tenaūcy by certeine seruice for all maner of seruice, so that the seruice be not knights seruice. As where a man holdeth his land of hys Lord by fealty and certeyne rent for all manner of seruice, or els where a man holdeth hys lande by homage, fealtie, and certeine rent, for al manner of seruices, for homage by hymselfe maketh not knights seruice.

Also a mā may hold of his lord only by fealtie, and such tenure is tenure in socage, for euerie tenure that is not tenure in chualry, is tenure in socage. And it is sayd that the cause wherefore such tenure is saide, and hath the name of tenure in socage, is thus. Quia hoc socag. dē est, q̄ seruitū soce. Et hec soca soce idē est q̄ caruca. s. one sok or one ploughlād. And in old time before ꝯ limitatiō of time in mynde,

great

great part of the tenauntes that held of their Lordes by ſocage ought to come with their plowes euerie of the ſayd tenants by certeine dayes in the yere, to eare and ſowe the lordes lands of his owne graines. But for that ſuch woorkes were done for the hyelode and ſuſtenaunce of their lordes, they were acquyted agaynſt their Lorde of all manner of ſeruices. And for this that ſuch ſeruice was done with their plowes ſuch tenure was called tenure in Socage. And after ꝑ ſuch ſeruices were chaunged in dyuers other manner ſeruices by conſent of the tenauntes, and by the deſire of their lordes, that is to ſay, into a yerely rent &c. But yet the name of Socage abydeth, and in dyuers places tenauntes yet do ſuch ſeruyce with their plowes vnto their Lordes, ſo that all manner of ſeruyces that bee not tenures by knyghtes ſeruyce bee called tenures in Socage.

¶ Alſo if a man hold of his Lord by eſcuage certaine. That is to ſay in ſuch fourme, that when eſcuage renneth and is aſſeſſed by the Parliamẽt to a more ſumme or to a leſſe ſumme, that the tenaunt ſhall pay to the Lorde but halfe a marke for eſcuage, and neyther more ne leſſe, to how great ſumme or lyttle ſumme ꝑ the eſcuage runneth, in this caſe, becauſe the eſcuage is in certeyne before that any eſcuage is aſſeſſed &c. Such tenure is tenure in Socage & not knyghtes ſeruice. But where the

somme that the tenant shal pay for escuage, is not certeine, that is to say, where it may bee that the somme that the tenaunt shall pay for escuage may bee at one time more and another lesse, after that it is assessed &c. this such tenure is tenure by knights seruice.

¶ Also if a man hold his land for to pay certeine rent to his lorde for castle ward, such tenure is tenure in socage. But where the tenant himselfe ought by him or by any other to make castle ward, such is tenure by knyghtes seruice.

¶ Also in al cases where the tenant holdeth of his lord to pay to him any certeine rēt, that rent is called rent seruice.

¶ Also in such tenures in socage if the tenant haue issue and die, his issue beinge within the age of 14. yeares, then the next frend of ỹ heire to whom the heritage may not descend shal haue the ward of the lande, and of the heire vnto the age of the heire of 14. yeres, and such wardeine is called wardeine in Socage. For if land discend to the heire by the fathers side, then the mother, or some other nygh cosin of the mother syde shall haue the ward. And yf land discend to the heire by the mothers syde then the father or the next frend of the fathers syde shall haue the ward of such landes or tenements. And when the heire commeth to the age of 14. yeres complete, hee may enter & put out his wardeine in Socage, and occupie the land him selfe if he will. And such wardein in

socage

ſocage ſhall take no iſſues or profits of ſuch landes or tenements to his owne vſe, but only to the vſe and profit of the heire, and of that ſhal yelde accompt when it pleaſeth the heire after that the heire hath accompliſhed the age of foꝛteene yeres. But ſuch a warden vppon ſuch accompt ſhal haue allowaunce of al hys reaſonable coſtes and expences of all thinges. And if ſuch a warden mary the heire within age of xiiij. yere, he ſhall make accompt to the heire or to his executoures of the value of the mariage, though he toke nothinge for the value of the mariage, for that it ſhalbee reckened his owne folye, that he would mary him with out takinge the value of the mariage without hee mary him to ſuch a mariage as is worthy in value as much as the mariage of the heire ꝛc. Alſo if any other man that is not a nyghe frende ꝛc. occuppe the landes and tenements of the heire as warden in ſocage, hee ſhalbee compelled to yeld accompt vnto the heire, as well as his next frende. For it is not plee for him in a writ of accompt to ſay that hee is not his nigh frende ꝛc. But he ſhal anſwere whether he occupieth the landes or tenementes as warden in ſocage or not. But inquire if after that the heire haue accompliſhed the age of xiiij. yere, and the wardeine in ſocage continually occupieth the land til the heire cõmeth to full age of xxj. yeres. If the heire at his full age ſhall haue an action of accompt againſt the warden of the time that hee hath occuppy-

ed after the said fortene yeres, as against his warden in socage, or against hym as against his bailite.

Also if wardeyne in chualrye make hys executours, and dye, the heire beeinge within age &c. The executours shall haue the warde, durynge the nonage. But yf the warden in Socage make executours and dye, the heire beeinge wythin the age of fowerteene yeres, his executours shall not haue the warde, but an other nygh frinde to whom the herytage may not dyscende shal haue the warde. And the cause of diuersities is, for that the warden in chiualry hath the warde to hys proper vse, & the warden in Socage hath not the warde to his owne vse, but to the vse of the heire. And in such case, where the warden in socage dyeth before any such accompt made by hym, the heire is of that without remedy, for that no writ of accompt lieth against the executors but onely for the king.

Also the lorde of whom the lande is holden in Socage after the death of hys tenaunt, shall haue reliefe in such fourme. If the tenaunt holde by fealtye, and certayne rent to pay yerely &c. If the termes of payement bee to pay by two termes of the yere, or by fower termes of the yere, the Lorde shall haue of the heire of hys tenaunt, as much as the rent amounteth that hee should paye by yere. Yf if the tenaunt holde of the

Lorde

Lord by fealtie, and x. shillinges of rent, payable at certeine termes of the yere, then ỹ heire shal pay to the lorde x.s. for relefe aboue theise x.s. that hee shal pay for the rent. Loke more in the statute of Anñ xix. Henry the seuenth Cap. xv.

And in such case after the death of the tenaunt such relefe is due to the lorde incontinent of what age soeuer the heire bee, for that such a Lorde may not haue the warde of the body nor the lande of the heire. And the Lord in such case ought not to abyde the payement of his relefe after the the termes and dates of payment of the rent, but hee ought to haue his relefe incontinent. And therefore hee may incontinent distreyne after the death of his tenaunt for the relefe. In the same maner it is, where a tenaunt holdeth of his Lorde by fealtie, and by a pound of commin, or a pounde of pepper by the yere, & the tenaunt dye, the lorde shall haue for his relefe a pound of commin or a pound of pepper.

In the same maner it is where the tenaunt holdeth to pay by yere a certein number of capons, or hennes, or a paire of gloues, or certein bushels of wheat, & such other manner thinge. But in some case the Lorde ought to abyde to distreine for his relefe til a certain time. As if the tenaunt holde of his Lorde by a rose or by a bushel of roses to pay at the feast of S. Iohn Baptist. If such a tenaunt dye in winter, then the Lorde may not distrayne for

his relefe &c. vntill the time that the roses by the course of the yere may haue their growynges &c. Et sic de similibus. Also yf any peraduenture will aske why a man may not holde of his lorde by fealty onely for al maner of seruices, in so much when the tenant shall make his fealty, hee shall sweare to his lord that hee shall doo al seruices due, and when hee hath made fealtie in such case, there is none other seruice due. To this it may bee saide, ỹ where the tenaunt holdeth his land of his lord, it behoueth that hee ought to doe to his lord some manner of seruice, for if the tenaunt nor his heires ought to do no manner of seruice to his lord nor to his heire, then by longe time continued it shoulde bee out of remembraunce of whom the land was holden, of the lorde or of his heire or not, and then more ofter and more sooner will men say that the lande is not holden of the lorde nor of his heires then otherwise, and vppon thys the lord shal lose his eschete of the land, or percase other forfaiture or profit that hee might haue of the lande. So it is reson that the lorde & his heires haue some seruice done vnto him for a proufe and a witnes that the land is holden in frank almoigne as shalbe said in frankealmoigne, and because that the lord will not at the beginninge of the tenure haue any other seruices but fealtye, it is reason that a man may holde of his lord only by fealty, and when hee hath made his fealtie, he hath done al his seruice.

Also

¶ Also if a man let to an other for terme of lyfe certayne landes or tenementes wythout speakinge of any thinge to yeld to the lessour, yet hee shall doo to the lessour fealty, for that hee holdeth of him. Also if a lease be made to a man for terme of yeres, it is said ỹ lessee shal doo to the lessour fealty, for ỹ he holdeth of him. And thus is proued well by the wordes in a writ of waste when the lessour hath cause to bring a writ of waste against hym, the which writ shal say that the lessee holdeth the tenements of the lessour for terme of yeres. So the writ proueth a nature betwene thē &c. but hee that is tenaunt at will after the course of the comon law, shall not make fealtie, because hee hath no maner of a sure estate. But otherwise it is of tenant after the custome of the manr, because that he is bound to do fealty to his lord for two causes, one is because of custome, the other is because ỹ he taketh hys estate in such fourme to doo fealtie.

¶ Frankalmoigne.

TEnaunt in franke almoygne is, where an abbot or priour, or an other man of religiō, or of holy church, holdeth of his lord in franke almoigne, that is to say in lattin. In liberam elemosinam, that is to say, in free almes.

And such tenure beganne first in olde tyme when a man in olde tyme was seised of lands or tenementes in his demeine, as of fee, and of the

of the same lande enfeoffed an abbot and hys couent, or prior and hys couent, to haue and to holde of them and their successours in pure & perpetuall almes, or in frankealmoigne, or by such wordes, to hold of the grauntour, or of ꝑ feffour and his heires in free almes. In such case the tenementes were holden in franke almoigne, and in the same maner it is where the landes or tenementes were graunted in olde tyme to a Deane and Chapter & to their successours, or to a persō of a church & to his successours, or to any other man of holy church & to his successours in free almes, if hee had capacitie to take such grauntes or feoffementes &c. & such as hold in free almes, be bound of right afore God to doo ordinarie, prayers, & masses, & other deuine seruices for the soules of ꝑ grantours or feoffoures, or for the soules of their heires which bee dead, and for the prosperitie & good life of them that bee a liue.

¶ And for this, they doo at no tyme no maner of fealty vnto their lordes, for that such diuine seruice is better for them before god, then any doinge of fealtie, and also these franke almoygne, exclude the lorde to haue any worldly or temporal seruice but onely to haue deuine and speciall seruice to bee done for him &c. And if such that holde their tenementes in free almes, or franke almoygne will not, or fayle to doe such diuine seruice as it is sayde, the Lorde may not distraine them for the seruices vndone &c. be-

cause

cause it is not set in certain, what service they ought to do: but ye Lord may of the complaint to their Ordinary, praying him that hee will set punishment & correction of that. And also to prouide and see that such negligence bee no more done, and the ordinary of right ought to doo that &c.

¶ But where an Abbot or a priour holdeth of his lorde by certeine deuine seruice in certeyne to bee done, as for to singe a masse euery fryday in the weeke for the soules &c. or euery yere at such a day to singe Placebo & Dirige &c. or to finde a chaplein to sing masse &c. or to distribut in almes to an hundred poore menne an hundred pence at such a day, in such case if such deuine seruice bee not done the lorde may distreine &c. for that this deuine seruice is in certeine by their tenure what the abbot or the priour ought to doe. And in such case the lorde shal haue the fealtie &c. as it seemeth.

And such tenure is not saide tenure in free almes, but it is saide tenure by deuine seruice. for in tenure in free almes, or franke almoigne, no mencyon is made of any manner certeyne seruice, for none may holde in free almes or franke almoigne if there bee expressed any manner certeyne seruice that he ought to doo.

¶ And if it be demaunded if the tenaunt in frankmariage shall doe fealtie to the donour or to his heires before the fowerth degree be passed &c. It seemeth that yea. for he is not

lyke

lyke as to thys intent to a tenaunt in free almes or franke almoigne for that the tenant in free almes shall do (because of his tenure) deuine seruice for the lord as it is aforesaid, and that hee is charged to doo by the lawe of holy churche, and for that hee is excused and discharged of fealty. But tenaunt in franke mariage doth not by his tenure such seruice.

And if he do not to his lorde fealtie, then hee doth not to his Lorde any manner of seruice neither spirituall nor temporall, which should bee an inconuenience and against reason that a man should haue estate of inheritaunce of an other, and yet the lorde shall haue no maner of seruice of him as it seemeth. and so it seemeth that hee shal do fealty to his Lorde before the fowerth degree be past &c. And when he hath done fealty, hee hath done al his seruice. And if an Abbot holde of his lorde in free almes, & the Abbot and his conuent vnder their comon seale alien the same land to a secular manne in fee simple, in this case the secular manne shall do fealty to the lord for that he may not holde of his lorde in free almes, for if the lord ought not to haue of him fealty, then he shall haue of him no maner of seruice which should bee an inconuenience where hee is Lorde, and the tenements ar holden of him.

¶ Also if a mā grant at this day to an abbot or to a priour landes or tenementes in free almes or franke almoigne bee voyde, for that

it is

it is ordeyned by the statute whych is called Mana emptores terrarum, which statut was made Anno 18. regis E. primi. That no man may alyen or graunt landes and tenementes in fee simple to holde him self, so that if a mā seised of certeine landes or tenementes which hee holdeth of his lorde by knightes service & at this day hee graunteth the same land to an Abbot &c. in free almes or franke almoigne, ỹ Abbot shall holde immediatlie the same tenementes by knightes service of the Lord of his grauntour because of the same estatut, so that no man may holde in free almes or in franke almoigne, but if it bee by title or prescription, or by force of a graūt made to some of his predecessours before the same statute. But the king may geeue landes or tenementes in fee simple to holde in free almes or frāke almoign, or by other service for hee is out of the case of the statute, and note well that no man may hold landes or tenementes in free almes, but of the grauntour or his heires, and that for the priuitie of the gift, and therefore it is sayed that if there be lord mesne and tenaunt, & ỹ tenaunt is an Abbot that holdeth of his mesne in franke almoigne, if the mesne die without heire, then the mesnaltie shall come by eschete to the said Lord aboue. & the abbot then shall hold of him immediatly only by fealty, & shal do him fealtie, for that he may not hold of him in franke almoigne &c.

¶ And note wel, where that such a man of reli=

religion holdeth his landes of his Lord in free almes &c. his lorde is bound by the law to acquite him of euery manner of seruice that any lord aboue him wil demaund or aske of ỹ same tenants. And if hee acquite him not but suffer him to be distrained &c. then hee shall haue against his lorde a writte of mesne, and recouer his dãmages & costes of his suit.

¶ Of homage auncestrel.

TEnure by homage auncestrell is, where a tenaunt holdeth his land of his lord by homage, and the same tenaunt and his auncester whose heire hee is hath helde the same land of the saide lord and of his auncesters, whose heire the lord is, from time out of mynd by homage, & haue doe homage vnto him which is called homage auncestrel because of the contynuaunce which hath been by tytle of prescription in the tenaunce, in the blood of the tenant, & also in the lordship in the blood of the Lord. And such seruice by homage auncestrel draweth to him warrantie, if the Lord that is aliue hath receyued homage of such tenaunt, he ought to warrant his tenant when he is impleded of the landes holden of him by homage auncestrell. And also such seruice by homage auncestrell draweth to him acquitaunce, that is to say, the Lorde ought to acquyte his tenaunt against all other lordes aboue him of euerie manner of seruice. And it is sayd that if such tenaunt bee impleded by a Precipe quod

reddat

reddat &c. and hee voucheth his Lord to warranty, which cometh in by proceſſe and aſketh of the tenaunt what hee hath to bynd him to warranty, and hee sheweth how hee and his aunceſters whoſe heire hee is, haue holden the lande of the vouchee and of his aunceſters, whoſe heire he is by homage from time out of mynd, if the lord which is vouched receaueth none homage of the tenaunt, nor of any of his aunceſters, the lorde then if hee will, may diſclayme in the lordſhip, and ſo put out hys tenaunt of his warranty. But if the lord which is vouched hath receiued homage of the tenãt or of any of his aunceſters, then may hee not diſclaime, but he is bound by the law to warrant the tenaunt, and then if the tenaunt leeſe the land in defaut of the vouchee, hee ſhall recouer in value againſt the voucher of the lãds or tenements that the vouchee had at the time of the vouche or ante tyme after. And it is to weete that in euery caſe where the Lord may diſclaime in his Lordſhip by the law in court of Record, and of that wil diſclaime, his ſeignourie is extinct, and the tenaunt ſhall holde of hys Lord next aboue the Lorde which ſo diſclaimeth. But if an Abbot or Priour bee vouched by force of homage ãceſtrel &c. though hee haue neuer taken homage &c. yet hee cannot diſclaime in this caſe nor in nõe other caſe, for they cannot deueſt that thing in fee which hath bene veſted in their houſe. Paſche 10. E. quarti.

¶ Also if a mā that holdeth his land by homage auncestrel alieneth his land to an other in fee, the alienee shall do homage to his lord. But he holdeth not of his Lorde by homage auncestrel for that the tenaunce was not continued in the hold of the auncestours of the alien, nor the alien shall neuer haue the warrātie of his land of his Lord, for that the continuaunce of the tenaunce in the tenant and in his bloud by the alienation is discontinued, & so see that the tenaunt that holdeth his land by homage auncestrel of the Lorde, and such a tenaunt alieneth in fee, though that he take estate of the alyen agayne in fee, he holdeth the land by homage, but not by homage auncestrell.

¶ Also it is said, that if a man hold his lād of his lord by homage and fealtie, and he hath made homage and fealty vnto his lord, and the lord hath issue a sonne, and dieth, and the lordship descendeth to his sone. In this case the tenaunt whych did homage to the father, shall not do homage to the sonne, for that when a tenaunt hath made once homage to hys lord, hee is excused for terme of his life to make homage to anie other heire of the lorde. But yet he shall do fealtie to the sonne and heire of his Lord though that hee made fealtie to his father.

¶ Also if the lord after ỹ homage to hym made by his tenaunt graunt the seruice of his tenaunt by deede vnto another in fee, and the tenaunt

tenant attorneth &c. the tenaunt ſhall not bee compelled to do homage but hee ſhal do fealtie though he did fealtie before to the graunton, for fealtie as incident to euery attournemẽt when the lordſhip is graunted. Item if a man be ſeyſed of a manour, and another man holdeth his land of him as of the manour aforeſaid by homage, the which hath done homage to his lord which is ſeiſed of the maniour, if after that a ſtraūger bring a Precipe quod reddat against the lord of the manour and recouereth the maniour against him and ſueth execution &c. in this caſe the tenant ſhal once agayne do homage to him that recouereth the maniour, for that the ſtate of him which receyued homage before is defeated by the recouery. And it ſhal not lie in the mouth of the tenant to falſify or defeate the recouerie which was againſt hys Lord, & to ſee the diuerſitie in this caſe where a man commeth to his lordſhip by recouery, and where he commeth by diſcent or graunt of the ſeigniory.

¶ And if a man tenant which ought by hys tenure to do homage to his Lord come to his lord and ſay to him, ſir, I owe to do vnto you homage for the tenements that I hold of you and I am redy to do you homage for the ſame tenements for the which I pray you that you will now receiue it, and if the lorde then refuſe to receiue it, then after ſuch refuſal the Lord may not diſtraine the tenaunt for the homage before that the Lord require the tenaunt to do

homage, and the tenant refuse to do it.

¶ Also a man may hold his land by homage auncestrel, & by escuage, or by other knyghtes seruice, as wel as he might hold his lande by homage auncestrel in Socage.

¶ Graund sergeantie.

TEnure by graund sergeantie is, where a man holdeth his lands or tenements of our soueraigne lord the king, by the seruice which he ought to do in his owne proper person, as to beare the kynges banner or his speare, or to lead hys host, or to be his marshal, or to beare his sword before him at his coronation, or to be his sewer at his coronation, or his keruer, or butler, or to bee one of his chamberleynes of his receipt of his Eschequer, or to do such seruices &c. and the cause wherefore such seruice is called graund sergeantie, is for that it is more honorable, & worshipful, & digne, then is ỳ seruice of ỳ tenure by escuage, for hee that holdeth by escuage, is not limitted by his tenure to do any more especial seruice then anie other ỳ holdeth by escuage ought to do. But he ỳ holdeth by Graund sergeantie, ought to do especial seruice to ỳ king, that hee that holdeth by escuage ought not to do.

¶ Also if the tenant which holdeth by escuage die, his heire beeyng of full age, if hee holde by a knyghtes fee, the heire shall pay but an C. s. for his reliefe, as it is ordeined by the statute of Mag. chart cap. 2. but he ỳ holdeth

deth of the kyng by graund ſergeauntie and dieth his heire being of full age, ſhall pay vnto the kyng for his relefe the value of hys landes or tenements by yere, beſide the charges and repriſes which he holdeth of the king by graund ſergeantie: And it is to woete, that ſergeauntie in latin is ſeruicū, and of magna ſerianitia is magnū ſeruicii, that is to ſay, a great ſeruice.

¶ Alſo thoſe which hold by eſcuage ought to do their ſeruice out of the realme. but they that hold by graund ſergeantie for the moſt part ought to doe their ſeruyce wythin the realme.

¶ Alſo it is ſaid ꝑ in ꝑ Marches of Scotland ſome hold of the king by cornage, that is to ſay, to blowe an horne for to warne the mē of the cōtrey &c. when they heare ꝑ ꝑ Scots or other enemies wil come or ēter into England &c. which ſeruice is graund ſergeauntie &c. but if ane tenant hold of ante other Lord thē of the king by ſuch ſeruice of cornage, that is not graūd ſergeantie, but it is knights ſeruice, and draweth to him ward, mariage, & relefe, for none may hold by graund ſergeantie, but of the king onely.

¶ Alſo a man may ſee in the xi. yere of kēry the fowerth that Cokain then beeyng chiefe Baron of Theſchequier came into the commō place bringing with him a copie of a recorde in theſe wordes. Talis tenet tantam terram de domino rege per ſeruitium ad inueniendum

bnum hominem ad guerrā infra quatuor ma-ria &c. That is to say, such a man holdeth so much land of our soueraygne Lord the kyng by sergeanty to warre within the fower seas. & hee demaunded whether it was graund ser-geauntie or petit sergeantie, and Hanke then laide that it was graund sergeantie, for that it was seruice to be done by the body of a mā, and if that hee may not finde a man to do the seruice for him hee must do it hym selfe. To whom the other Justices assented, Cokein this sayde, the tenaunt in this case shall pay reliefe to the value of the land by yeare, to the which was none aūswere, and note that al they that hold of the kyng by graund sergeauntie, hold of the king by knightes seruice, and the kyng of that shal haue ward, mariage, & reliefe but ye king shal not haue of them escuage if they hold not by escuage.

¶ Petit sergeantie.

TEnaunt by petit sergeantie is where a manne holdeth his lande of our souereigne Lorde the kyng to yeelde vnto him yearely a Bowe, a swoorde or a dagger, or a knyfe, or a spere, or a paire of gloues of Mayle, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yeelde such other small thynges touching the warre, and such seruyce is but socage in effect, for that that the tenaunt by his tenure ought not to goe nor to do anie thyng in hys owne

owne proper person touching the warre. But to yelde and pay yerely certaine thinges vnto the kinge as a man ought to pay a rent. And note ℘ no man holdeth lande by graunde sergeauntie nor by petite sergeauntie but of the kinge.

¶ Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough holde of the king their tenementes, that euery tenaunt for his tenement ought to pay to the kinge a certaine rent by yere &c. And such tenure is but tenure in Socage, and the same manner is where an other lord spirituall or temporall is Lorde of such a borough, and the tenauntes of the tenementes in such a borough hold of their Lorde to pay ech of them yerely an annuel rent, and it is called tenure in Burgage, for that the tenementes within the borough be holden of the Lord of the borough by certayne rent &c. And it is to wite that the auncient Townes called Boroughes bee the most auncient and eldest Townes that bee within England, for the townes that now be cities or counties, in olde time were boroughs and called boroughes, for of such olde townes called boroughes came these Burgeses of the Parliament to the Parliament when the king hath summoned his Parliament.

¶ Also for the greater parte such boroughes haue diuers customes and vsages which bee not had in other Townes, for some borough hath such a custome, that if a man haue issue many sonnes and dieth, the yongest sonne shal inherite al the tenements which were his fathers within the same borough as heire vnto his father by force of the custome, the which is called borough English.

¶ Also in some boroughes by the custome ỹ wife shal haue for her dower al the tenemẽts which were her husbandes.

¶ Also in some borough by the custome a mã may deuise by his testament his landes and tenements which hee hath in fee simple within the same borough at the time of his death, & by force of such deuise he to whom such deuise is made after the death of the deuisour, may enter in the tenementes to hym deuised, to haue and to holde to him after the fourme & effect of the deuise without any liuery of seisin therof to be made to him.

¶ Also though a man may not graunt nor giue his tenementes to his wife durynge the couerture, for that that his wife and he be but one person in the lawe, yet by such custome he may deuise by his testament hys tenementes to his wife to haue and to holde to her in fee simple, or in fee tayle, or for terme of lyfe, or of yeres, for ỹ such deuise taketh none effect but after the death of the deuisor. And if a man at diuers times make diuers testaments and di-

uers

tiers deuises &c. yet the last deuise & will made by him, shal stande and abide.

¶ Also by such custome a man may deuise by his testament that his executours may sell and sel the tenementes that he hath in fee simple for a certeyne summe to distribute for the soule, in this case though the deuisour die seysed of the tenements, and the tenementes discend vnto his heire, yet the executours after ye death of the testatour may sel the tenementes so deuised, and put out the heire, & therof make a feoffement, alienation, and estate by deede or without deede, to them to whom the sale ys made vnto.

¶ And so may ye see here a case where a man may make a lawfull estate, and yet hee hath nought in the tenementes at the tyme of the estate made, and the cause is for that, that the custome and vsage is such. Multa consuetudo ex certa causa rationabili vsitata privat communem legem. For a custome vsed vpō a certain reasonable cause, barreth the cōmon law. And note wel, no custome is to bee allowed, but such custome as hath ben vsed by tytle of prescription, that is to say, from time whereof is no mind. But diuers opinions hath ben of time out of mind, & of tit'e of prescriptiō which is al one in ye law, for some men haue said that the time of minde shoulde be saide for time of limitation in a writte of right, that is to say, frō the time of kinge Richarde the first after the Conquest, as is geuen by the Statute of

Weſtminſter ꝑ ſaith,for that a writ of right is the moſt highest writ in his nature that may be. And in ſuch a writ a man may recouer his right of the poſſeſſion of his auncesters of the moſt auncient time that any man may by any writ by the law. And in ſo much that it is geuen by the ſaid eſtatute, that in ſuch a writ none ſhalbe heard to aſke of the ſeyſon of his auncesters of more longer time then of ꝯ time of kinge Richarde aforeſaid, therefore this is proued that continuaunce of poſſeſſion or other cuſtomes & vſages vſed after the ſame tyme is tytle of preſcriptiō, and this is certein. And other haue ſayde that wel and truth it is that ſeiſin and continuance after the limitatyon &c. is a title of preſcription as is aforeſaid and by the cauſe aforeſaid. But they haue ſayed that there is alſo an other title of preſcription that was in the common law before any eſtatut of limitation of writs &c. and that it was where a cuſtome or vſage or other thinge had bene vſed for time whereof minde of man runneth not to the contrary, and they haue ſaid ꝯ this is proued by the pleding where a man will plede a title of preſcription of cuſtome &c. he ſhal ſay that ſuch cuſtome hath bene vſed from time whereof the memory of men runneth not to ꝯ contrary, that is as much to ſay, when ſuch a matter is pleded that no man then alyue hath heard one proofe to the contrary, nor hath no knowledge to the contrary, and in ſo much ꝯ ſuch title of preſcription was at the common

lawe

lawe and not put out by any statute. Ergo it abideth as it was at the common lawe and the sooner in so much that the said limitation of a writ of right & cas of so long time passed.

¶ Ides quærede hoc, & many other customes and vsages haue such auncient boroughes.

¶ Also euery borough is a towne, but not to the contrary, more shalbe said of customes in ȳ tenure of villenage.

¶ Villenage.

TEnure in villenage is most properly when a villayn holdeth of his Lord to whom he is villaine, certeine landes & tenementes after the custome and manner, or els at the will of his Lorde and to do hys villayne seruice, as to beare, hyng, and carie out the donge and fylth of the lord vnto the lād of his lord there to lay it, cast it, and spreade it abrode vppon the land, and to do such other maner of seruice, and some free tenauntes hold their tenements after the custome of certein mannours by such seruice, and their tenure is called tenure in villeynage, & yet they be no villaines, for no land holden by villenage or villeine landes, or any custome rysinge of the lande shall neuer make free mā villein. But a villaine may make free lād to be villein land vnto his lord. as if a villayn purchase lāde in fee simple or in fee tayle, the Lord of the villaine may enter into ȳ land & put out the villain & his heires for euer, and after

after the lord (if he will) may let the same land to the villein, to holde in villenage.

¶ Also if a feffement be made vnto certain person or persons in fee, to the vse of a villeine, or if a villain or any other persons bee enfeoffed to the vse of a villayne, what estate so euer the villain hath in the vse, in fee taile, for terme of life or yeres, the lord of the villeine may enter in all those landes and tenementes likewise as if the villeyne had beene alone seised of the demesne. And that is by the statute of Anñ 19. H. 7. ca. 15. But if a free man will take any lands or tenements of his lord by such villeine seruice, that is to say, to pay a fine to his Lord for his mariage, or for ꝑ mariage of hys sonne or his daughter, then shall hee pay such a fine for the mariage &c. for that it is the folly of such a free man to take in such fourme landes or tenementes to holde of his Lorde by such bondage, yet that maketh not the free manne villayne.

¶ Also, euery villaine, either hee is villayne by ꝓscription, that is to say, hee and his auncesters haue bene villaines time out of minde, or he is villain by his own confession in court of recorde. But if a free man haue diuers issues, and after confesseth him selfe to be villain to another in court of recorde, yet hys issues which he hath before the confession be free, but the issue which he shal haue after ꝑ confession &c. shalbe villaines.

¶ Also if a villayn purchase landes and alye-

nerth

neth the same lands to another before his lord enter, then the lord may not enter, for it shalbee iudged his owne folye that he entred not when the lande was in the villains handes. And so it is of his other goods, for if the villeyne buy & sell, or giue goods to another before that the lorde seised the goodes, thē the Lorde may not sease thē, but if the lorde before anysuch sale or gift commeth within the house of the villayne where such goodes be, & there openly among ỹ neighbours clayme the same goodes to be his, and so seyse parcell of the same in name of seysin of all the goodes &c. This is sayd a good seysin in the lawe. And the occupation that the villayn hath after such clayme in ỹ goods, shal be taken in the lawe the right of the Lorde. But if the kinge haue any villaine that purchaseth landes & alieneth before that the kinge enter, yet the Kynge may enter in the land in whose handes the lande commeth to. Or if the villayne buy or sell dyuers goodes before that the kinge seyse the goodes, yet the kynge may seyse them in whose handes that euer they be. Quia nullū tempus occurrit regi, for no time renneth against the king.

¶ Also yf a manne let lande to another for terme of lyfe, sauing the reuersion to hym, and a villayne purchaseth of the lessour the reuersion, in this case it seemeth, that the Lord of the villayne may incontinent come to the land and clayme the same reuersion as Lorde of the same Villaine, and by thys clayme,

the

the reuersion is incontinent in him, for in any other tourne he may not come to the reuersiō for hee may not enter vpō the tenant for terme of lyfe, and if he ought to auoide till after the death of the tenant for terme of lyfe, then happely he might come to late, for parauenture ꝑ villayne will graunt or alyen it to an other in the life of the tenaunt for terme of life. In the same maner it is where a villeyn purchaseth the aduowson of a Churchful of an incumbent, that the Lorde of the Villeyne may come to the saide Churche and clayme the aduowson. And by this clayme the aduowson is in him, for if he abide till after the death of the incumbent and then present his clarke to the sayde Churche: Then in the meane tyme the villain might alien the aduowson &c. and so put out the Lord from his presentation.

¶ Also there is a villaine regardant & a villayne in grosse. Villayne regardant is as if a man be seised of a manour to which a villain is regardant, and hee that is seised of the sayd manour, or they whose estate he hath in ỹ same manour haue bene seysed of the said villain & of his auncestors as villains regardant to the manour from time out of minde. And villain in grosse is where a man is seised of a manour to the which a villain is regardaunt, hee graunteth the same villain by his deede vnto an other, then he is villain in grosse, and not regardaunt.

¶ Also yf a manne and hys auncestors whole

whose heire he is hath beene seysed of a villayne and of his auncestours as villayne in grosse tyme out of mynde suche beene villaines in grosse. And note well that of such thynges which may not be graunted nor alyened wythout deede or fyne a manne that will haue such thinges by prescription may not otherwise prescribe but in him and hys auncesters whose heire he is, and not by these wordes, in him and in those whose estate hee hath, for that that he may not haue their estate wythout deede or writting the which behoueth to be shewed to the court if hee will haue any aduauntage of this, because that the graunt and the alienation of a villaine lyeth not wyth out deede or other writing: A man may not prescribe in a villayne in grosse without shewing of writig, but in him selfe that claimeth the villaine and in his auncesters whose heire hee is. But of those thinges which bee regardaunt or appendaunt to a mannour or to other landes or tenementes, a manne may prescribe that hee and they whose estate hee hath were seised of the manour or of such lands or tenementes as regardauntes or appendauntes to the manour or to such landes and tenementes &c. from tyme out of mynde. and the cause is for this that such a mannour, lands and tenementes may passe by alienation without deede &c. And it is to witte that nothyng is named regardaunt to a mannour but a villeine. But certayne other thynges as auowsons and

commune

commune of pasture &c. be named appendaun-
tes to the mannour or to other landes and te-
nements.

¶ Also if a man in court of Record knowe-
ledge him selfe to bee villeine that neuer was
villeyne before, such one is villeyne in
grosse.

¶ Also a man that is villeine is called vil-
leine. and a woman that is villeyne is called
nicse, and a man that is outlawed is called an
outlawe, and a womā that is outlawed is cal-
led a wayue.

¶ Also if a villeine take a free womā to wife,
the issue betweene them shalbe villeine. But
if a nicse take a free man to husband, their is-
sue shalbe free. And that is contrary to ℔ lawe
ciuile, for there he sayth that partus sequitur
ventrem.

¶ Also no bastard may be villeine, but if that
he will knowledge him selfe to be a villeine in
court of Record, for he is in the lawe quasi nul-
lius filius, as the sonne of no man, for that he
may be inheritour to no man.

¶ Also euery villeine is able and free to sue
al maner of actions agaynst euerie person ex-
cept against his Lord to whom he is villeine,
and yet in certayne thynges hee may haue
agaynst hys Lord an action of appelle for the
death of hys father, or of his other auncesters
whose heire hee is, also a nicse which is ra-
uished by her Lord may haue appele of rape
against him.

¶ Also

¶ Also, if a villeine be made executour to another, and the lord of the villeine was indebted to the testatour in a certeine summe of money the which is not paied, in this case the villeine as executour to ỹ testatour shall haue an actiõ of debt against his lord, because he shal not recouer the det to his proper vse, but to ỹ vse of the testatour.

¶ Also, the Lord may not take of the possession of such a villeyne that is executour of the deads goods, and if hee do, the villaine as executour shall haue an action of Trespas against hys lorde for the same goods so taken, and recouer dammages to the vse of the testatour. But in all these cases it behoueth the lord (which is defendaunt in such actions) to make protestation that the pleintife is his villeyne, or els the villeyne shalbe enfraunchised though the matter be found for the lord against the villeine, as it is said.

¶ Also, if a villeine sue an action of tresspas or other action ageynst his Lord in one shire, and the Lord sayeth that hee shall not bee answered for that hee is villeine regardaunt to hys Mannour in an other shire, and the pleyntife sayeth that hee is franke and of free estate and no villeyne, thys shall bee tryed in the shire where the playntyfe hath receyued hys actyon. and not in the shire where the Mannour is, and this is in fauour of liberty, as it is iudged. M. 40. E. 3.

And

And for thys cause was made a statut in the xx. yere of Richard the secõd. ℔ tenure of which entreth in such forme.

¶ Also for that where many villaines and neifes as well of great lords as of other folke spirituall and temporal flee and go into cities and places fraunchised as the cite of London and other like places, and sue diuers suites against their lords because they would make themselues, to be enfraunchised, it is accorded & assented that the Lords not none other shalbe forebarred of their villaynes because of their aunswere in the lawe, by force of which statute if any villaine will sue any maner of action to his owne ble in any shere where it is hard to trie &c. against hys lorde, hys Lorde may chose to plede that the plaintife is his villaine, and to plede another matter in barre, and if they be at issue and the issue bee founde for the Lord, thẽ the villain is villain as he was before by force of the same statute. But yf the issue bee found for the villeine, then is the villaine franke and free for that the lord toke not for his plee that the villeine was his villaine, but tooke it by protestation.

¶ Also the Lorde may not mayme hys villaine, for if hee mayme his villayne he shal of that bee indicted at the kynges suit. And if hee be of that attainted, he shall for that make greeuous fine and raunsome to the king. But it seemeth that the villein shal not haue by the lawe

lawe ante appelle of mayme agaynſt his lord, for in appelle of mayme a manne ſhall not recouer but his dammages. And if the villeyne in that caſe recouer dammages agaynſt hys Lorde, and hath thereof execution, the lorde may take that that the villaine hath in execution from the villaine, and ſo the recouery ſtedeth holde.

¶ Alſo if the villaine be demaundant in an action real or playntife in an action perſoncll againſt his lord, if the lord wil plede in dilatorie of his perſon, he may not make plaine defence, but he ſhal defend but the wrong & the force, and demaund iudgement if hee ſhal bee aunſwered and ſhew his matter by & by how he is villaine & demaund iudgement if he ſhal be aunſwered.

¶ Alſo fyve manner of men there be againſt whom if they ſue actions &c. iudgement may bee asked if they ſhalbee aunſwered. One is where the villaine ſueth an action &c. agaynſt his lord, as in caſe aforeſaide. The ſecond is where a man outlawed vppon an action of Dette or treſpas or vppon any other action or indictment, the tenaunt or the defendant may ſhewe all the matter of the record and the outlawry, & demaund iudgement if he ſhalbe aunſwered becauſe that hee is out of the lawe to ſue any action during the time that he is outlawed. The thirde is where an alien doue out of the allegeance of our ſoueraigne lord ye kyng, if ſuche alyen ſue ante action reall or perſo-

perſonall, the tenaunt or defendant may ſay ꝑ he was borne out of the kinges allegeaunce, & aſke iudgement if he ſhalbee aunſwered. The ſo werth is, where a man by iudgement geue againſt him vpon a writte of Premunire fac. &c. is out of the kings protection, if he ſue any action, and the tenaint or defendaunt ſhew all the record againſt him, he may aſke iugement if he ſhalbe aunſwered, for the law & ꝑ kinges writtes been the thinges by which a man is protect & holpen, & ſo during the time ꝑ a mā in ſuch caſe is out of the kinges protection, he is out of helpe & protect by the kinges law or by the kinges writ.

¶ The fift is, where a man is entred and profeſſed into religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into religion in ſuch a place into the order of Saint Benet, and is there a monke profeſſed, or in the order of fryers mynours or preachers, and is there a fryer profeſſed, and ſo of other orders of religion &c. and aſke iudgement if he ſhalbe aunſwered. & the cauſe is this, that when a man entreth into religion and is profeſſed, he is dead in ꝑ law, and hys ſonne or nett cofin incontynent ſhall inherite him aſwell as though hee were dead in deede, and when he entreth into religion, he may make his teſtament & his executours, & they may haue an actyon of debt due to hym before his entre into religiō, or any other action that executours may haue if he were dead

in deede.

in deede. And if he make none executours whē he entreth into religion, then the ordinary may commit the administration of his goods to e-ther as if he were dead in deede. The fift is where a man is accursed by the lawe of holie Church, and he sueth an action real or perso-nall, the tenaunt or defendant may plede that he that sueth is accursed, & of this it behoueth him to shewe the Bishops letters vnder hys seale, witnessing the accursing, and alle iudge-ment if he shalbe answered &c. but in this case if the demaundant or pleintife cannot deny it, the writ shall not abate, but the iudgement shalbe that the tenaunt or defendaunt shall go quite without day for this, that when the de-maundant or pleintife hath purchased his let-ters of absolution, & shewed them to the court he may haue a resommons or a reattachement vppon his originall after hys nature of hys writ &c. But in the other cases the writ shal abate &c. If the matter shewed may not bee gaynesayd.

¶ Also if a villein be made a secular priest, yet his lord may seise hī as his villain, & seise his goods &c. But it seemeth ꝑ if ꝑ villayne enter into religiō & is professed &c. that the lord may not take him nor seise him for ꝑ he is dead in ꝑ lawe. And no more the if a free mā may take a niefe to his wife ꝑ lord may not take ne seyse ꝑ wife of the husband. But his remedy is to haue an action agaynst the husband, for that hee tooke his niefe to wife wythout hys will

and so may the Lorde haue an actyon against the souereigne of the house that taketh & admitteth his villaine to be possessed in the same house without lycence and will of his Lorde &c. and shal recouer his dammages to the value of the villaine, for yᵗ is professed monke &c. shalbe a monke, and as a monke shalbe taken for terme of his life natural except hee bee decayned by the lawe of holie church, and hee is holden by his religion to kepe his cloyster, and if the lord may take him out of the house, then he should not liue as a dead person, nor after his religion which should be incontinent &c. For if there bee wardeine in chiualrie of bodie and of landes of childe within age, if the child when he cõmeth to the age of xiiij. yeres enter into religion & is professed, the wardein hath none other remedy as to the ward of the bodie, but a writte of Rauishment of warde against the souereigne of the house. And if any being of full age that is cosin & heire vnto the chylde enter into the lande, the wardeine hath no remedy as to the warde of the land, because that the entre of the heire of the childe is lawful in such case.

¶ Also in many diuers cases the Lorde may make manumission and infraunchising to hys villayne. Manumission is properly when the Lord maketh his deede to his villeyne to enfraunchise him by this worde Manumittere, which is as much to say, as extra manū, & extra potestatē alterius ponere, as to put him out of the

of the handes and the power of another. And for this that by such a deede the villain is put out of the hand & power of his Lord, it is called manumission. And so euery manner of enfraunchising made to a villayne, may bee sayd a manumission. Also if the Lorde make to hys villayne an obligatyon for a certain summe of money, or graunte vnto hym by his deede an annuitie, or let hym by his deede, landes or tenementes, for terme of yeres, the villayne is enfraunchised. Also if the Lorde make a feoffment to his villayne of any landes or tenementes by deede or without deede in fee simple or fee tayle, or for terme of yeares. and deliuereth vnto him the seysin, this is an enfraunchysinge, but yf the Lorde make to him a lease of landes or tenementes, to holde at the wil of the Lorde, by deede or without deede, this is no fraunchysinge, for that he hath no maner of certaintie nor suertie of his estate, but that the Lorde may put hym out when hee will. Also if a Lord sue against his villayn a Precipe quod reddat, if he recouer or be nonsuit after appearance, this is a manumission, for this that he may lawfully enter into the lande without such suit. In the same maner it is if he sue against his villayne an action of Dette, or of accompt, or of couenaunt, or of Trespas, or such other, this is an infraunchisinge &c. for this that hee may enprison his villain, & take his goods without such suit. But if the Lord sue his villayne by appeale of Felony. this is

none enfraunchising to the villain though the matter of the appel is found against the Lord, because that the lord may not haue the villain hanged without such suit. But if the villaine were not endited of the same felony before the appelle sued against him, and is acquited of the felony, so that he recouer damages against the Lord for the false appeale: Then in this case ỹ villayne is enfraunchised because of the iudgement of dammages that was geuen to him against his Lord. And more cases and matters there be by ỹ which a villain may be enfraunchised against his lord. Sed de illis quere. Also if a Lord of a manour will prescribe that it hath bene accustomed wythin hys manour tyme out of minde that euery tenant within ỹ same manour that marieth his daughter to any man without licẽce of the lord of ỹ manour shal make fine to the Lord for the time being, this prescription is voyde, for none ought to make such fines but onely villaynes, for euery free man may freely mary his daughter to whom it pleaseth him, and his daughter. And because that this prescription is against reasõ, such prescription is voide. But in the shire of Kent of lands holden in Gauelkind where by the custome and time out of minde the childrẽ males ought euenly to enherite, this custome is allowable, for this that is with some reason because that euery sonne is as great a gentleman as the elder sonne, and because of that more great honour and valure shal growe thẽ if he

if he had nothinge by his auncestours, where peraduenture he might not so growe &c.
Also, where by custome called borough English, in some borough ỹ yongest sonne shall inherite al the tenements &c. This custome also standeth with reason, because that the yonger sone if he lack father & mother because of hys yong age, may leask of al his brethren help him selfe &c. But if a mā wil prescribe ỹ if any cattel were vpon ỹ demesnes of his manor there doing damage, ỹ the lord of the manor for the time beinge hath vsed to distraine thē and the distres to retein til fine were made to him for the dammages at his wil, this prescription is void, because it is against reason ỹ if wrōg be done to a man, ỹ he therof should be his owne iudge, for by such way if hee had damages but to ỹ value of an halfe peny, hee might assesse & haue therof an C.li. which should bee against al reason, & so such prescription or any other prescription vsed if it be against al reason, this ought not nor wil not be allowed before Iudges, Quia malus vsus abolendus est.

¶ Rents.

THree manner of rents there bee, that is to say, rent seruice, rent charge, & rent secke, rent seruice is, where a man holdeth his lande of his lord by fealty and certeine rent or by other seruice, and certaine rent.

¶ Or by homage, fealtie, and certayne rent.

And if rent ſeruice at any day that it ought to be payd be behinde, the Lord may diſtreine for that of common right. And if a man now will geue landes or tenementes to another in the taile, yelding to him certeine rent by yere, hee of common right may diſtrein for the rent behinde though that ſuch gift was made wythout a deede, becauſe that ſuch rent is rent ſeruice, but in ſuch caſe where a man vppon ſuch a gift or leaſe will reſerue to him rent ſeruice, it behoueth that the reuerſion of the landes and tenementes be in the donour or in the leſſour, for if a man will make a feffement in fee, or will geeue landes in the tayle, the remaynder ouer in fee ſimple without a deede, reſeruinge to hym certaine rent, ſuch reuerſion is voide, becauſe ỹ no reuerſion is in the donour, and ſuch a tenaunt holdeth his lande immediatly of the lorde of whom hys donour holde. And this is by force of the eſtatut of weſtm 3. Cap. 1, Quia emptores terrarum. For before ỹ ſame eſtatute if one made a feffement in fee ſimple by deede or without deede, yeldinge to him and to his heires certeine rent, this was rent ſeruice, and for this hee mpght diſtreyne of common right. And if he made no reuerſion of any rent nor of any ſeruice, yet the feoffee helde of the feoffour by ſuch ſeruice as the feoffour held ouer of his lord next aboue. But if a mā by deede indented at a day, make ſuch a gift in the tayle, the remaynder ouer in fee &c. or feoffement in fee, and by the ſame indenture

ture reſerueth to him and to his heires a certaine rent, and that if the rent be behinde, that it ſhalbee lawfull to him & to his heirs to diſtraine &c. ſuch rent is rent charge, becauſe ſuch lands and tenements be charged of ſuch dyſtreſſe by force of the writinge onely, and not of cõmõ right. And if ſuch a mã in ſuch a dede endented, reſerue to him and to his heires certaine rent without any ſuch cauſe ſet or put in the dede, that he may diſtraine &c. that ſuch rent is rent ſecke, becauſe that hee cannot dyſtreyne to haue the rent if it be denied by the ſame diſtreſſe, & if he were neuer ſeiſed in this caſe of the rent, he is without remedy as ſhall be ſayde hereafter. Alſo if a man ſeiſed of certaine land graunt by his dede Polle, or by endenture, a yerely rent iſſuinge out of the ſame lande to another in fee ſimple or in fee tayle, or for terme of life &c. with clauſe of diſtreſſe, &c. then that is rent charge, and if it bee without clauſe of diſtreſſe, then it is rent ſecke, and note well, that rent ſecke idem eſt quod reditus ſiccus, and for that, that no diſtreſſe is incident to it. Alſo, if a man graũt by his dede to another, and the rent is behinde, the graũtee may chooſe if he will ſue a writ of Annuity of it againſt the graũtour, or diſtraine for the rent behinde, and the diſtreſſe to withhold till he bee of that payde. But he may not doe and haue both together, for if hee take a writte of Annuitie, thẽ ẏ land is diſcharged. And if hee ſue not a writ of Annuity, but diſtraine for the arrera-

arrerages, & the tenant sueth a Replegiare &c. & the graunte anoweth the taking of the distresse in the lande &c. in court of record, then is the land charged, & the person of the graūtour discharged of an action of annuitie,

¶ Also if a mā will that another shall haue a rent charge issuynge out of the landes, but hee will not that his person shalbee charged in a manner by a writ of annuitie, then hee may haue such a clause in the end of his dede. Proviso semp quod presens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandū personam meam per breue de annuali redditu. Sed tantummodo ad onerandū terrā et tenta prēd de annuali redditu prēd. And then is the lande charged, & the person of the graūtour discharged.

Also, if a man make such a dede in such maner, þ if I. of B. be not yerely payd at þ feast of Christmas for terme of lyfe of xx. s. of lawfull money, that thē it shalbe lawfull to the said I. of B. to distraine for it in the Manour of F. &c. this is a good rent charge, because that the manour is charged of the rent by way of distresse. And yet the person himselfe þ made such a dede is discharged in this case of an actiō of annuitie, because þ hee graunted not by his deede any annuitie to the said I. of B. but graunted onely that hee may distreyne for hys annuitie.

¶ Also, if a man haue a rent charge to hym and to his heires issuynge out of certayne lond,

if hee

if hee purchase any parcel of the lande to him and to his heires, all the rentes is extinct and annulled bycause the rent charge may not in such maner be apportioned, but if a man that hath rent seruice purchase parcel of the lande whereof the rent is, this shal not extinct all, but for the portion, for the rent seruice in such case may bee apportioned and shalbee apportioned after the value of the lande, but if a tenaunt holde hys lande by seruyce to pelde to hys Lorde yerely at such a feast an horse, or an hawke, or such thinge semblable, if in such case the lorde purchase parcell of the lande, the seruice is gone, becawse that such seruice may not bee seuered nor apportioned, but if a man holde his lande of another by homage, fealtie and escuage, and by certayne rent, if the Lorde purchase parcel of the lande &c. In that the rent shalbee apportioned as is aforesaide, but yet in this case the homage and fealtie abideth whole to the Lorde, for the Lorde shall haue the homage and fealty of hys tenaunt for the remenant of landes and tenementes holden of hym as hee hadde before &c. for this that such seruices bee no annuell seruices, and may not bee apportioned. But the escuage may & shall bee apportioned after the quantitie and rate of the lande.

¶ Also if a man haue a rent charge, and hys father purchaseth parcel of the tenemẽts charged in fee and dyeth, and that parcell dyscenderh to his sonne that hath the rẽt charg, now this

this rent charge shalbee appoꝛcioned after the value of the land, as is afoꝛesaid of ꝛst seruice, beecause that such a poꝛtion of the lande purchased by the father, commeth not to the sonne by his owne deede, but by dyscent and course of the lawe.

¶ Also if there bee Lord and tenant, and the tenaunt holdeth of his Lorde by fealtie & certaine rent, and the Lord graunteth the rent by hys deede to another &c. reseruinge to him the fealtie, and the tenant attourneth to the graũtee of the rent, now such rent is rent secke to ꝯ grauntee, foꝛ this that the tenementes bee not holden of that grauntee of the rent, but be holden of the Lord that receyueth to him fealtie. And in the same maner it is where a mã holdeth his land by homage, fealtie, and certayne rent, if the Lord graunt ꝯ rent, sauynge to him the homage, such rent after such graũt is rent secke, but where landes oꝛ tenementes bene holden by homage, fealty, and certayne rent, if the Lorde will graunt the homage of his land by his deede to another, sauynge to him the remenant of the seruices, and the tenant attoꝛneth to him after the fourme of the graunte, nowe in this case the tenant holdeth his land of the graunt, and the lord that grauneth the homage shall not haue but the rent as rent secke, and shall neuer distrayne foꝛ the rent foꝛ this, that neyther homage, noꝛ fealtie, noꝛ escuage may be said secke, foꝛ he ꝯ hath oꝛ ought so haue of his tenaunt homage, oꝛ fealtie, and

escuage

eſcuage may of common right diſtraine for it if it bee behynde, for homage, fealtie, & eſcuage been ſeruices by whych landes and tenementes be holden, and bene ſuch that in maner may be taken but as ſeruices. But otherwiſe is of rent that was once rent ſeruyce for this that whē it is ſeuered &c. by the graunt of the lord frō the other ſeruices, it may not be ſaide rent ſeruice for this ꝑ it hath not to it fealty whych is incident to euery maner of rent ſeruice, and for this it is ſaid rent ſecke.

¶ Alſo if a man let land to another for terme of lyfe, reſeruyng to hym certeyne rent, if her graunt the rent to another ſauyng to him the reuerſion of the land ſo letten by his deede &c. ſuch rent is but rent ſecke, for this that the graunte hath nothing in the reuerſion of the land. But if he graūt the reuerſion of the land to another for terme of life, and the tenant attourneth &c. then hath the graunte the rent as rent ſeruice becauſe hee hath the reuerſion for terme of lyfe. And ſo it is to be vnderſtand that if a man geue landes or tenementes in the taile, reſeruyng to hym and to hys heires certaine rent, or let land for terme of life reſeruing certeine rent, if her graunt the reuerſion to another, and the tenaunt attourneth, al the rent and ſeruice paſſeth by the woorde of the graunte of reuerſion for this that all the rent and ſeruice in ſuch caſe bee incidentes to the reuerſion and paſſe by the graunt of reuerſion. But though he graunt the rent to another

the

the reuersion palleth not by such graunt &c. And so note well the diuersitie. And so it is holden Paſche xij. E. 4. But it is adiudged An. xxvj. lib. Ass. where as the seruices of the tenaunt in taile were graunted that that was a good graunt, yet notwithstanding the reuersion remaines.

¶ Also if there be Lord, meine, and tenant, and the tenaunt holdeth of the meine by ỹ rẽt of fiue shillinges, and the meine holdeth ouer by twelue pence, if the lord aboue purchase the tenaunty in fee, then the seruice of the meinaltie is extinct for this, that whē the lord aboue hath the tenaunty, hee holdeth of the Lord next aboue hym. And if he ought to holde it of him that was meine, then hee should hold one selfe tenauncie immediatlie of diuers Lordes whych should bee inconuenyent, and the lawe will sooner suffer a mischiefe then an inconuenience, and for this the seigniouris of the meinaltie is extinct. But in so much that the tenaunt held of the meine by fiue shillings, and the meine held but by xij.d. so that he had more aduauntage by iij.s. then he payd to his Lord, hee shall haue the sayd iij.s. as a rent secke yerely of the Lorde that purchaseth the tenaunte.

¶ Also if a manne that hath rent secke to, once seyled of anie parcell of the rent, and after if the tenaunt will not pay the rent that is behynd, thys is hys remedie. It behoueth hym to go by hym selfe, or by another,

to the

to the landes and tenementes, whereof the rent is illuying, and there to demaund the arrerages of the rent. And if the tenaunt denie to pay it, thys denying is a disseysin of the rent. Also, if the tenaunt at the tyme bee not readie to pay it, this is a denying and a disseisin. Also, if the tenaunt, nor none other bee dwelling vpon the lands or tenements when he asketh the arrerages &c. this is a denying in law, and a disseisin in deede, and of such disseisins hee may haue an action of Nouel dysseysin agaynst the tenaunt, and recouer the seysin of the rent, and the arrerages, and hys dammages and costes of his writ and of hys plee &c. And if after such recouerie the rent be another tyme denied him, then he shal haue a redisseisin and recouer double dammages. And it is to bee had in mynd, that thys name Assise is Equiuocum. For sometyme it is taken for a Jurie, for in the beginning of the record of Assyse of nouel dilleysin, the record shall begynne thus. (Assisa venit recognit) which is to say, that iuratores vel recogn, and the cause is for this, that by the writ of assyse is commaunded to the sherife quod faciat vij. liberos & legales homines de vicineto &c. videre tenementum illud, et nomina eorum inquirere, et quos sumn cos q bonos sumn q sint cor Justiciarijs &c. parati inde facere recognitionem &c. And for this, that by force of such an original writte, a Pannell by force of the same writ ought to bee returned &c. It is

sayd

layde in the beginning of the record in assise. Assisa venit recogn &c. Also in a writ of right it is commonly layde, that the tenant may put him in good & in the great assise &c. Also there is a writte in the Register, called De magna assisa eligenda. so is this a good proofe that this name assise, sometime is put for the Jurie, and sometime it is taken for all the writte of assise, and after that entent it is most properly and most commonly taken, as assise of nouel disseisin is taken for all the writ of assise of nouel disseisin. In the same maner assise of cõmon of pasture is take for al the writ of assise of cõmon pasture, and assise of Mortancester, and assise of Darreine presentment &c. But it seemeth that the cause why such writtes at the beginning were called assises, is for this, that by euery such writ it is commaunded to the Sherife that he sommon xij. &c. which is as much to say, that he ought to sommon a Jurie &c. and sometyme assise is taken for an ordynaunce, for to sette certeine thinges in a certeine rule and disposition, as an ordynaunce that is entred in the auncient estatuts, is called Assisa panis & seruicie. Also if there bee lorde and tenaunt, and the Lorde graunteth the rent of his tenaunt by dede to another, sayyng to him the other seruices, and the tenaunt attourneth, this is a rent seeke as yt is aforesaid. But if the rent bee demyed hym at the nexte day of payment, he hath no remedy for this that he had not thereof any possessiõ.

But

But if the tenant when hee attourneth to the grauntee, or after, will geue a peny or an halfe peny to the grauntee in ꝑ name of seisin of rẽt, then if after at the next day of payment the rẽt be denyed him, hee shall haue an assise of Mouel disseisin, and so it is if a man graūte by his dæde a yerely rent issuing out of hys land to an other &c. If the grauntour then after pay to the grauntee j. ð. or an halfe peny in ꝑ name of seisin of the rent, then if after the first day of payment the rent be denied, the grauntee may haue an assise, or els not. Also of rẽt seeke a mã may haue an assise of Mortdãcester, or a writ of Ayel or Cosinage, & all other maner of actions reals, as the case lyeth, as hee may haue of any other rent.

¶ Also there be three causes of distresse of rẽt seruice, that is to say, rescous, replevin, & enclosture. Rescous is, when the lord distreineth in the land holden of him for hys rent behind, if the distresse bee rescued frõ him, or the lord come vpon the land, and would distrayne, and the tenaunt or an other man will not suffer hym &c. Replevin is when the lord hath distrayned, and replevin is made of the distresse by writ or by playnt &c. Enclosture is if the landes and tenementes be so enclosed, that the Lord may not come within the land and tenementes for to distrayne, and the cause why such things so done bee disseisins made to the Lord is for this, ꝑ by such things the lord is disturbed of the meane by which hee ought to

haue come to his rent. And fower cauſes be of diſſeiſin of rent charge, that is to ſay, reſcous, repleuin, encloſure, and denyer, for denying is a diſſeiſin of rent charge as it is afore ſayde of rent ſecke, & two cauſes bee of diſſeiſin of rent ſecke, that is to ſay, encloſure, and denyer, and yet it ſeemeth that there is an other cauſe of diſſeiſin of al the three rents afore ſaide, that is when the Lord is going to the land holden of him for to diſtreine for the rent being behinde, the tenãt hearing this, encloſtreth him & foreſtalleth him the way with force and armes & manaſeth him in ſuch fourme that he dare not come to the land for to diſtraine for his rẽt behind &c. for doubt of death, or bodely hurt, this is a diſſeiſin, for this that the lord is diſturbed of the meane whereby hee ought to come to his rent, and ſo it is if by ſuch foreſtalling and manaſſing hee that hath rent charge or rent ſecke is foreſtalled, or dare not come to ỹ land to aſke the rent behinde.

¶ The thirde Booke.

¶ Parceners.

PArceners be in two manners, that is to ſay, parceners after the courſe of the common laſwe, & parceners after the cuſtome. Parceners after the courſe of the common laſwe be, where a man or a woman be ſeyſed of certeine land or tenementes in fee ſimple or fee taile and hath none iſſu but daughters & dieth

and

and the tenements discend to the daughters & the daughters enter into the lands & tenemts so to them discended then they bee called parceners & bee but one heire to their auncester & they be called parceners for this, ꝑ by the writ that is called Breue de participatione facienda the lawe will constraine them that participation shalbe made among them, & if there be iij. daughter to whom the land discendeth then they be called two parceners and if they be iij. daughters they be called three parceners, and fower daughters fower parceners, & so forth, and if a man seysed of lands, in fee simple or in fee taile die without issue of his body, and the tenements discend to his sisters they be parceners as is aforesaid In the same manner it is where he hath no sisters but the lād discendeth to his auntes they be parceners, but yf a man haue but one daughter shee may not bee saied parcener, but daughter and heire. And it is to weete ꝑ partition betweene parceners may bee made in diuers maners, one is when they agree to make partition and make partition of the tenementes, and if there bee two parceners to deuyde betweene thē the tenemts in two partes euery part by him selfe in seueralty of euen value, and if there be three parceners to deuyde the tenementes in three partes in seueralty. In other ptitiō there is to chuse by agreement betweene them & certein of their frends to make the ꝓtion betweene thē of the lands and tenements in the fourme aforesaid.

And in such cases after such partition the elder daughter shall choose first one of the parts so deuyded whych thee will haue for her part. And then the second daughter after her another part &c. if it so bee that there be many sisters &c. If it be not that thei be not otherwise agreed betwene them, for it may be agreed betwene them that one of them shall haue such tenementes and an other such tenementes &c. without any such first election and the part that the elder sister hath is called in latin Entitia pars, but if the parceners agree that the elder sister shall make partition of the tenementes in the fourme aforesayd, and if she do, then it is sayd that the elder sister shall choose the last parte after eche of her other systers. Another partition and allotting there is, as if there be fower parceners, & after such partition made of the landes euery part of the land is by it selfe written in a little scrowe, and it is couered al in waxe in a maner of a litle ball so that no man may see the scrowe, thē is the fower balles of waxe put in a Bonet to kepe in the handes of an indifferent man, and then the elder daughter first shal put her hand in ȳ bonet which shal take a balle of waxe and the scrowe within the same ball for her purparty, and then the second sister shal put her hand in ȳ bonet & shall take another, & so thē the third sister the third ball &c. and in this case it behoueth eche of them to hold them to their chāce and allottement.

¶ Also

¶ Also another partition there is as if there be fower parceners, and they will not agree ỹ partition shalbe made betweene them, then one of them may haue a writ de partitione faciendo against the other three sisters, or two may haue a writte of participatione faciendo against the other, or ỹ thre against ỹ fowerth at their election, and when iudgement shalbee geuen vppon such a writ, the iudgement shal be such that partition shalbe made betweene ỹ parties. and the shirrife in his proper person shall goe to the landes and tenementes &c. and that he by the oth of xij. true men of his bayliwike &c. shall make partition betweene the parties, the one party of the same landes shall be alligned to the plentife or to one of ỹ plentifes, & an other party to an other &c. not making mention in the iudgement of the eldest sister more then of the yongest, & of the partition that he hath this done, hee shal make notice to the Iustices &c. vnder his seale and the seales of the xij. &c. and so in this case may you see that the elder syster shall not haue the first election &c. but the sherife shall alligne the part that shee shall haue &c. and it may bee that the shirife will alligne ỹ first part to the yonger sister and the last part to the elder.

And note wel partition by agreement betwene parteners may by the lawe bee made amonge them as wel by word without deede, as by deede.

¶ Also if two meses discende to two par-

ceners and the one meſe is worth by yere xx. ſ. and that other but x. ſ. by yere, in this caſe partition may be made betweene them in ſuch fourme ỹ the one parcener ſhall haue the one meſe and the other parcener ſhall haue the o= ther meſe, and he that ſhall haue the meſe of xx. ſ. and his heires ſhall paye a yerely rent, of v. ſ. iſſuing out of the ſame meſe to an other parcener and to his heire for euer, becauſe that euery of them ſhall haue euen in value, and ſuch partition, made is good inough, and the ſame parcener that ſhall haue the rent of v. ſ. and his heires may diſtreyne for the rent of common right in the ſame meſe of the value of xx. ſ. if ỹ rent of v. ſ. be behinde at any time in whoſe handes ſoeuer the ſame meſe com= meth though there was neuer writynge made of it betweene them in the ſame maner it is of partition of al manner of landes and te= nementes &c. where ſuch rent is reſerued to one, or to diuers parceners vppon ſuch party= tion &c. but ſuch rent is not rent ſeruice, but rent charge, of common ryght had and reſer= ued for egalty of the partition. And note well that none bee called parceners by the com= mon lawe but women or the heires of wo= men, and whych come by landes and tene= mentes by diſcent, for if ſiſters purchaſe landes or tenementes of this they bee called Jointe= nauntes and not parceners. Alſo if two par= ceners of lande in fee ſimple make partition betweene them &c. and the parte of that one

valueth

valueth muche more then the parte of the other, if they were at the time of partition of full age, that is to say, of xxj. yere, then they alway shal abide and neuer be defeated, but if tenementes whereof bee made particions bee to them in fee taile, and the parte that one hath is much better in yerely value then the parte of the other, howbeit that they bee excluded during their lines to defete the partition, yet if the parcener that hath ꝑ lesser part in value hath yssue and dyeth, the issue may disagree to the partition, and enter & occupy in common that other parte ꝑ is allotted to her aunt, & so the aunt may enter and occupy in common the other parte allotted to her sister, as no partition therof had ben made &c.

¶ Also, if two parceners of tenements in fee take husbands and they and their husbandes make partition betwene them, if the parte of ꝑ one bee lesse in yerely value then the parte of ꝑ other, during the lines of the husbandes, the partition shalbee in his force and strength, yet after the death of the husband the wife ꝑ hath the lesse parte &c. the same wife or wyma̅ may enter in her sisters part as it is afore said, and defete the partition, but if ꝑ partition so made betwene the̅ were such, ꝑ every part at time of lottement were egall of yerely value, then it may not after be defeated in such cases.

¶ Also, if there be two parceners & ꝑ ponger of them bee within the age of xxi. yere, and partition is made betwene them, so that the

parte that is allotted to the ponger, is lesse in value then the part of that other. In this case the ponger during the tyme of her nonage, and also when shee cometh to full age of xxj. yere, may enter in the possion of her sister allotted, &c. and defeate the partition, but such a parceiner ought to take heede when shee cometh to full age, that shee ne take to her own vse, all ye profites of the tenemets to her allotted, for by that shee agreeth to the partition at such age, in which case the partition shal stande and abide in his force and strength &c. but paraventure the profits of the halfe shee may take leasing the profits of the other halfe to her sister &c. It is to weete, that when it is said males and females bee of full age, that shalbe understanded of the age of xxj. yere, for if any feoffement or graunt, releise, confirmation, obligation, or any other writinge before any such age bee made by any of them &c. or that any within such age bee bailife or receyuer wyth any man &c. all serueth for nought and may bee avoided. Also a man before such age shall not bee sworne in no iury nor no inquisition. Also if tenementes bee geuen to a man in the tayle which hath as much lande in fee simple, and hath issue two daughters & dieth, and the daughters, make partition betweene them, so that the lands in fee simple be allotted to ye ponger daughter in allowaunce of the tenementes tayled, allotted to the elder daughter, if after such partition the ponger daughter alieneth

lyeneth the lande in fee ſimple to an other in fee,and hath iſſue a ſonne or a daughter and dyeth, the iſſue may enter in the tenementes tayled,and them hold in purpartie wyth their Aunte,and thys is for two cauſes,one is for that,that the iſſue may haue no remedye of the lande alened by hys mother, for that the lande was to her in fee ſimple,and in ſo much that hee is of the heires in the tayle, and hath nothinge recompenſed of that,that to him belongeth of the tenementes tayled, and namelye when ſuch partition maketh no diſcontynuaunce of the tayle,as ſhalbee ſayde hereafter in the Chapiter of diſcontinuaunce. But the contrary is holden M.10. H.6. that is to ſay, that they may not enter vpon the partener that hath his land tailed,but is ſent to his Formedon,

An other cauſe is,for that, if it ſhalbee erected the folye of the elder ſiſter,that ſhee would agree to the partition where ſhee myght haue had halfe the land in fee ſimple,and halfe of the tenementes in the tayle for purparty,and ſoe to bee ſure without damage &c. Alſo if a man ſeiſed in a ploughe lande by iuſt title dyſſeiſeth an infaunt within age of another ploughe lande,and hath iſſue two daughters, and dyeth ſeyſed of both thoſe plough landes,the enfant then beeinge within age,& the daughters enter & make partition,then the one plough lād is lotted to the purparty of the one,as parcale to the yonger ſiſter in allowaunce of that o-

ther

ther ploughe lande ꝑ allotteth to the purpar-
ty of that other, so that after the infant entreth
in the ploughe lande of the which hee was
dissersed vppon the possession of the parcener
that hath the same ploughe lande, then the
same parcener may enter into ꝯ other plough
lande that the syster hath and holdeth in par-
cenary with her, but if the ponger sister alyen
the same ploughe lande to an other in fee sim-
ple before the entre of the enfaunt. and after ꝯ
childe entreth vppon the possession of the alie-
nee, then shee may not enter into the other
ploughe lande, for this that by her alienation
shee hath vtterly dismissed her selfe to haue
any part of the tenementes as parcener, but
yf the ponger sister before the entre of the en-
faunt make thereof a lease for terme of yeres,
or for terme of life, or in fee taile, sauing the re-
uersion to her. and after the childe entreth,
there paraduenture it is otherwise, for this that
shee dismissed not her selfe of al that, that was
in her, but hath reserued to her the reuersion ꝯ
the fee simple &c.

¶ Also if there bee three or fower parceners
that make partition betwene them, if the part
of the one parcener be defeated by such lawful
entry, shee may enter ꝯ occupy the same other
lands of al the other parceners, and compelle
them to make new partition of ꝯ other landes
betwene them &c.

¶ Also, yf there bee two parceners, and the
one taketh an husbande, and the husbande and
the

the wife hath iſſue betwene them, & the wyfe dieth, and the huſband holdeth him in ꝯ halfe as tenaunt by the curteſie, In this caſe ꝯ parcener ꝯ ſuruiueth & the tenant by the curteſie may wel make partition betwene thē &c. And if the tenant by curteſie wil not agree to make partition, then the parcener ꝯ ſuruiueth may haue a writ de participatione facienda &c. and compel him to make partition. But if the tenāt by the curteſie wil haue partition betwene them, & the parcener ꝯ ſuruiueth will not haue it then the tenant by the curteſie ſhal haue noe remedy for to haue partition for hee may not haue a writ de participatione faciēda, for this ꝯ he is not parcener, for ſuch a writ lyeth for parceners al only. And ſo may ye ſee ꝯ ꝯ writ de participatione facienda lieth againſt tenāts by ꝯ curteſy, & yet him ſelfe may not haue ſuch a writ.

¶ Parceners by the cuſtome.

PArceners by the cuſtome bee where a man ſeiſed in fee tayle of the lands or tenements that bee of the tenure called Gauelkind with in ꝯ ſhire of Kent, & hath iſſues diuers ſōnes and dieth, ſuch landes and tenementes ſhall diſcende to all the ſonnes by the cuſtome, and they euenly ſhall enherite and make partycyon betwene them by the cuſtome as females doe, and a writ de participatione faciēda lyeth in this caſe as betwene females, but

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it behoueth in the declaration to make mentiō of the custome. Also such custome is in other places in England and also such custome is in North wales.

¶ Also there is an other partition that is of an other nature, and in an other fourme then any of the partitions aforesaid, as a man seyseth of certaine landes in fee simple hath issue two daughters, and the elder is maried, and the father geueth parcell of the same landes to the husbande with his daughter in franke marryage, and dyeth seysed in the remenaunt the which remenaunt is of more greater value by yere then be the landes geuen in franke mariage.

¶ In this case the husbande and the wyfe shall haue nothinge for their part of the sayed remenaunt, but if they will put in their landes geuen in frank mariage in hotchpot with the remenaunt of the lande with her sister, and yf they will not do so. then the ponger sister may occupy the same remenaunt, and take to her the profites onely, and it seemeth that this word hotchpot is in Englishe a puddinge. for in such a puddinge is commonly put not one onely thinge, but one thinge with an other and for this that it behoueth in such case to put the landes geuen in franke mariage with the other landes in hotchpot yf the husbande and the wife will haue any thinge in the other remenāt &c. This word hotchpot is but a terme of similitude, & is as much to say as to put the

landes

landes geuen in franke mariage & other landes in fee simple &c. together, & this is to such entent to accompt the value of all the lands that is to say, of ꝑ lands geuen in frãke mariage & the remnaunt that was not geuen, and then partition shalbe made in this fourme that ensueth. As put case that a manne seysed of xxx. acres of land in fee simple euerie acre in value xij.ð. by the yere, which hath issu 2. daughters, and the one is couert baron, & the father geueth x. acres of the xxx. acres to the husband with his daughter in franke mariage & dyeth seysed of the remnaunt, then the other syster shal enter in the remnaunt, that is to say, in the xx. acres, and shall occupie it to her owne vse, except the husband and the wife will put their x. acres euen to them in franke maryage with the other xx. acres in hotchpot, that is to say, together, and then when the value is knowen of euery acre, that is to say, euerie acre is yerely worth xij.ð. then the partition shalbe made in such fourme, that is to say, that the husband and the wyfe shall haue aboue the x. acres geuen to them in franke mariage b. acres in seueraltie of the xx. acres, and that other syster shall haue the remenaunt, that is x b. acres of the xx. acres for her part. so that accompting the x. acres that the husband and the wife had in franke mariage, and the other b. acres of the xx. acres, the husbãd & the wife haue as much in yerely value as ꝑ other syster hath, & so alway vpõ such partition the landes

geuen

geuen in franke mariage abyde to the donors or to the heires &c. after ꝑ forme of the gift &c. For if ꝑ other parcener should haue nothig of this ꝑ is geuen in frãkmariage, of this should folow an inconuenience & a thing against reason which the lawe will not suffer &c. and the cause why that lands geuen in frãke mariage shalbe put in hotchpot is this, ꝑ when a man geueth lands and tenements in franke maryage with his daughter or with his other cosin, it is to vnderstand by the lawe that such gift made by such wordes franke mariage is an aduancement of his daughter or of his cosin, and namely when the donour & his heires shall not haue any rent or service of hym except fealtie vnto the foweerth degree be passed &c. and for such cause the lawe is that she shal haue nothyng of the other landes and tenementes dyscended to the other parceners &c. but if she will put the tenemẽts geuen in franke mariage in hotchpot as is afore said, and if she will not put the lands geuen in frank mariage in hotchpot, then she shall haue nothing in the remenãt for this that it shalbee vnderstand by the lawe that she is sufficiently aduaunced to wythch aduauncement shee agreeth & holdeth her content, and the same lawe is in this matter betweene the donees in frank mariage and the other parceners as to put in hotchpot &c. the same lawe is betweene the heires of the donees in franke mariage and the parceners &c. if the donees in franke mariage die before

their

their auncesters, or before such partition &c. as to put in hotchpot &c. And note well that gifts in frank mariage was by the cõmon law before the statute of Westminster the second, and alway after so hath beene vsed and continued &c.

¶ Also such putting in hotchpot &c. is where lands or tenements that were geuen in frãke mariage discend frõ the donours in frãke mariage alonely, for if the landes discend to the daughters by the father the donour, or by the mother the donour, or by the brother the donour or other auncesters, & not by the donour &c. there it is otherwise, for in such case she to whom such gift in franke mariage is made, shall haue her part as if no such gift in franke mariage had bene made, for this that she was not aduanced by him &c. but by another.

¶ Also, if a man seysed in xxx. acres of land, euery acre of euen perely value, hauing in issue two daughters as it is aforesaid, and geueth of this to the husband of the daughter xb. acres in franke mariage and dyeth seised in the other xb. acres, in thys case that other syster shall haue the xb. acres so discended to her only, and the husband and the wife shall not put in such case the xb. acres to him geuen in frãk mariage in hotchpot &c. for this that the tenements geuen to him in franke mariage bee of as good peerely value as the other landes discended &c.

¶ For

¶ For if the landes geuen in franke mariage were of as euen value as the remnaunt, or of more value, then in payne and to none entent such landes geeuen in franke mariage shalbee put in hotchpot &c. for this that she may haue nothing of the other landes descended &c. For if she should haue any parcel of the other lãds discended, then should she haue more in perely value, then her sister &c. Whych the lawe will not &c. And as it is said in the cases aforesaid, of two daughters or two parceners, in ỹ sãe manner, and in lyke cases is, where there bee mo sisters after that, as the case and the matter is &c. And it is to wytte, that landes & tenementes geeuen in franke mariage, shall not bee put in hotchpot, but with the lands discended in fee simple, or of landes descended in fee taile partition shalbee made as if no such gift in frãke mariage had bene made. Also no lãds shalbee put in hotchpot with other, but lands that bee geuen in franke mariage al only. For if any womã haue any other lãds or tenemẽts by anie other gitt in the tayle, shee shall neuer put such land so geuen in hotchpot &c. but she shall haue the part of the remnaunt, discended &c. that is as much as the other parcener shal haue of the same remenant.

¶ Also an other partition may bee made betwene parteners, that varieth from the partitions aforesayd, as if there be three parceners, and the yongest would haue partition, and the other two would not, but will holde in parcena-

cenary that, ÿ to thẽ belongeth wythout partition. In this case if one part bee allotted in severaltie to the yonger sister after that, that she ought to haue, then the other may hold the remenant in parcenary & occupie in common without partition if they wil, & such partition is good inough. And if after the elder & middle parcener will make partitiõ betwene them of that that they held, they may wel do so when they please. But where partitiõ shalbe made by force of a writ de Participatione faciẽd &c. there otherwise it is, for there behoueth that euery parcener haue his part in seueraltie &c. More shalbe said of parceners in the chapiter of Jointenants, & also in the chapiter of Tenants in common.

Joyntenaunts.

Joyntenaunts be as a man seysed of certaine lands or tenements &c. and thereof hath enfeoffed two, or thræ, or fower, or moe, to haue and to hold to them and to their heires, or to haue and to holde to them for terme of their liues or for terme of an others lyfe, by force of which feoffement they be seysed, such be iointenaunts.

Also if two or thræ disseise another of any lands or tenements to their owne vse, then the disseisours be iointenaunts. But if they disseise another to the vse of one of them, then bee they no iointenaunts, but he to whom the

ble of the disseysin is made sole tenaunt, & the other haue nothing in the tenancy but ber called coadiutors to ꝑ disseisin &c. And note well ꝑ disseisin is properly where a man entreth into any lands or tenemẽts where his entre is not lawfull, & putteth hi out ꝑ hath the frãktenemẽt &c. And it is to weete, ꝑ the nature of ioyntenãcy is, ꝑ he that suruiueth shal haue onelie the whole tenancy after such estate as he hath if the ioincture be cõtinued &c. As if iij. ioyntenãts be in fee simple & ꝑ one hath issu & dieth, yet they that suruiue shal haue the tenements whole, & the issue shal haue nothing. & yf the second ioyntenant haue issue & die, yet the third ꝑ suruiueth shal haue the tenements whole, & shall haue them in fee simple to him & to hys heires, but otherwise it is of parceners. If or yf iij. parceners be, & before any partitiõ, the one hath issue & dieth, ꝑ that to him belõgeth shal discẽd to his issue, & if such a parcener die wtout issue, then that, that to her belongeth shall discẽd to her heirs, so that they shal haue thys by discent & not by the suruiuour as ioyntenauntes haue &c. And as the suruyuour holdeth place among ioyntenaunts &c. in the same maner he holdeth place amõg them that haue ioynt estate or possession with other of cattel reall, or cattell personall. As if a lease of landes or tenementes bee made of manie for terme of yeares, he that suruiueth of the lesses shal haue the tenements whole to him during the terme by force of the same lease. And yf

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any hoyſe, or other cattel perſonal be geuen to many mo, he that ſurmueth ſhal haue them to him ſelfe.

¶ In the ſame maner it is of dets & duecties &c. For if an obligation be made to many for one duty, he ꝑ ſurmueth ſhal haue al the debt, & ſo it is of al other couenants & contracts.

¶ Alſo ſome ioyntenauntes may bee that may haue ioynt eſtates and bee ioyntenaunts for terme of their liues, and yet they haue ſeuerall inheritaunces, As if landes be geuen to two meune and to the heires of their two bodies engendred. In thys caſe the donees haue ioynt eſtate for terme of their two liues and they haue ſeuerall inheritance. For if the one of the donours haue iſſu and die, the other that ſurmueth ſhall haue al by the ſurmuour for terme of hys life. And if hee that ſurmueth hath alſo iſſue, and die, then the iſſue of the one ſhall haue the halfe of the lande, and the iſſue of the other ſhal haue the other halfe of the lande, and they ſhall hold the land betweene them in commune, and be not ioyntenauntes but tenauntes in commune. And the cauſe that ſuch donees in ſuch caſes haue ioynt eſtate for terme of their liues, is this for this, that at the beginninge landes were geuen to them two, which woordes wythout more ſaying make a ioint eſtate to thē for ſume of their liues. For if a mā will let lād to another by deede or ſhout deede, not making mēcīō what eſtate he hath, & of this maketh leaſe

ryc of seysin. ¶ In this case the lessee shal haue estate for terme of his ipse, and so in so much that the lands were geuen to them, they haue a ioint estate for terme of their ipues: and the cause why they haue seuerall inheritaunce is this, in so much that they cannot by possibilitie haue an heire betweene them ingendred as a man and a woman may haue &c. thē the law will that their estate and their inherytaunce shalbe such as reason wyl after the fourme & effect of the wordes of the gyft, and that is to the heires that the one engendreth of hys body by any of his wiues, and the heires that the other engendreth of his body by any of his wiues &c. So it behoueth by necessitie of reason that they shall haue seuerall inheritance. And in such case, if the issue of one of the donees after the death of the donees die so that hee hath no issue aliue of his bodie engendred, then the donour or his heire may enter in the halfe as in his reuersion, though ỹ other of the donees hath issue alyue &c. And ỹ cause is for so much ỹ the inheritaunce bee seuered &c. the reuersion in the law is seuered &c. and the surmuour of the issue of the other shall holde no place to haue the whole, & so as it is sayd of males, in the same maner it is where land is geuen to two females & to the heires of their two bodies begotten.

¶ Also if landes be geeuen to two females & to the heires of one of them, thys ys a good iointure, and the one hath a freeholde, and the other

other hath fee simple, & if hee that hath the fee die, he ꝑ hath ꝑ free hold shal haue the hole by the suruiuour for terme of life. In ꝑ same maner it is where rents be geuen to two, & to ꝑ heires of the body of one of them engendred, the one hath free hold, & the other fee taile. Also if two iointenaunts be seysed of estate of fee simple, and the one graunteth a rent charge by hys deede to another out of that, that to hym belongeth &c. In this case during the life of the graunteur, the rent charge is effectual. But after his decease the rent charge is voide as to charge the land, for he that hath the land by the suruiuour shal hold al the land discharged. And the cause is for this, that he that suruiueth claymeth to haue the land by the suruiuour &c. and not by discent of his felowe &c. But otherwise it is of parceners, for if there bee two parceners of tenementes in fee simple, and before any partition the one chargeth, that, that to him belongeth by his deede of a rent charge &c. and dyeth without issue, & that that to hym belongeth discendeth to the other parcener. In this case the other parcener shall hold the lande charged &c. for thys that he cõmeth to the halfe by discent as heire &c.

¶ Also if there bee two iointenauntes in fee simple within one borough where the landes and tenements within the same borough bee deuysable by testament, if the one of the sayd iointenauntes deuyse that that to hym belongeth by testament &c. and dye, this deuyse is

voide. And the cause is for this that no deuise may take effect but after the death of the deuisor. And for this that by his death al ꝑ land incontinent commeth by the lawe to his felow that suruiueth by the suruiuour, whiche claimeth nor hath nothing in the lande by the deuise but in his owne right by the suruiuor after the course of ꝑ lawe &c. for this cause such deuise is voide.

¶ But otherwise it is of parceners seised of tenementes deuisable in such case of deuyse, &c. Causa qua supra. Also it is commonly said that euery iointenant is seised of the land that he holdeth iointly &c. through and by al. And this is as much to say, that hee is seysed by euery parcell and by al &c. and this is true, for in euery parcel, and by eche parcel, and by all the landes and tenementes he is iointly seysed with fellowes &c.

¶ And if two iointenants be seised of certain landes in fee simple, and the one letteth that, that to him belongeth to a straunger for terme of fourty yere, and dieth within the terme: In this case after his decease the lessee may enter and occupy the halfe to him letten during ꝑ terme &c. though the lessee neuer had possession of it in the life of the lessour by force of ꝑ lesse &c. And the diuersitie betwene the case of the grant of a rent charge, & this cale is this. For in the grannt of a rent charge by a iointenant, the tenantes abide alway as they were before without that, that any hath any ryght to haue

parcel

parcell of the tenements but himselfe, & the tenauntes abide in such plyte as they were before the charge &c. But where a leale is made by a ioyntenant to another for terme of yeres &c. inconsideracion of the leale the lessee hath right in the same lād, that is to say, of all that, ꝑ to his lessour belonged, & to haue ꝑ by force of the same leale during his terme &c. & this is the diuersitie &c.

¶ Also iointenātz if they will, may make partition betweene them, & the partition is good enough, but they shal not be compelled by the lawe to do it. but if they will make partition of their proper will and agreement, the partition shall stand in his strength. Pl. 7. E. 4.

¶ Also, if a ioynt estate be made of lande to the husbande and the wife and to the thirde person, in this case the husband and the wife haue not in the lande in their right but ꝑ halfe &c. And the third person shall haue as much as the husbande and the wife both, that is to say, the other halfe &c. And the cause is for that the husbande and the wife be but one person in the lawe, & be in like case, as if estate be made to two iointenants, where each one hath by force of iointure the one halfe, & the other ꝑ other halfe. In the same manner it is where estate is made to the husband & the wyfe & to other two meniie, in this case the husbande and the wyfe haue not but the thirde parte, and the other two ꝑ other two parts &c. Cautela quia supra. Where shalbe saide of them touchinge

toint enaunce in the chapiter of tenaunces in common, tenant per Elegit, and tenaunt by eſtatut marchant.

¶ Tenantes in common.

TEnauntes in common be they that haue landes and tenements in fee ſimple, fee taile or for terme of lyfe &c. which haue ſuch landes and tenementes by ſeuerall title, and not ioint title, and none of them knowe that that is ſeuerall to him. But they ought by the lawe to occupie ſuch landes and tenementes in common, and indeuyded to take the profites in common. And becauſe that they come to ſuch landes and tenementes by ſeuerall titles, and not by one ſelfe ioynt title, and their occupation & poſſeſſion ſhalbe by the lawe to be among them in common, they be called tenauntes in common, as if a manne enfeoffe two ioyntenants in fee, and the one of them alieneth that that to him belongeth, to another in fee, nowe the other ioyntenaunt and the alienee bee tenaunts in common, for this that they bee ſeyſed in ſuch tenementes by ſeuerall tytles, for the alienee cometh in the halfe by the feoffement of ioyntenaunt, and the other ioyntenaunt hath the other halfe by force of the firſt feoffement made to hym and to his firſt felowe, and ſo they be in by ſeuerall tytles, and by ſeuerall feoffementes &c. And it is to weete, that when it is ſeid in any booke that a man is ſeyled in fee, without more ſaying, it ſhalbee

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vnderstande fee simple, for it shall not bee vnderstand by such woorde in fee, that a man is seised in fee taile, except that there be put thereto such addition, that is to say, fee taile.

¶ Also, if three tountenants bee, and the one of them alieneth that, that to him belongeth to another in fee. In this case ye alienee is tenaunt in common with the other two tountenaunres. But yet the other two tountenantes be seysed of the two parties wontly, & of those two parties the surmount betweene them holdeth place &c.

¶ Also if there bee two ioyntenaunts in fee, and the one geueth that, that vnto him belongeth to another in the tayle, the donee and the other tountenaumtes be tenantes in comon &c. But if the landes be geuen to two men & to the heires of their two bodyes engendred, the donees haue ioynt estate for terme of their ipues, and if the of them haue issue and dye, their issues shall holde in common &c. But if landes bee geuen to two Abbottes, as to the Abbot of Westminster and to the Abbot of S. Albons, to haue and to holde to them and to their successoures, in this case they haue incontinent at the beginninge, estate in common, and not ioynt estate. And the cause is for this, that every Abbot or other soueraigne of an house of religion before that hee be made Abbot or soueraigne, was but a dead man in the lawe. And when he is made Abbot, he is as a mā personable in ye lawe, al onely to purchase

chase and to haile landes and tenementes and other thinges to the vse of his house and not to his owne proper vse, as other secular men may. And for this in the beginninge of their purchase they be tenauntes in common. And if the one of them dye, the Abbot that succedeth shall not have all by the survivour, but the successour of the abbot that dyeth shall holde the halfe in common with the Abbot that succedeth.

¶ Also if lands be geven to an Abbot & to a secular man, to have & to holde to them, that is to say, to the abbot & his successours, & to the secular man, to him & to his heires: they have estate in common, Causa qua supra.

¶ Also if lande be geven to two men to have & to holde the one halfe to the one & to his heirs, and the other halfe to the other & to his heirs, they be tenants in common.

¶ Also if a man seised of certeine landes & tenementes offereth another in the halfe of the same lande without any speciall or assignement or limitation of the same halfe in fourme afore said at the time of the feoffement, than the feoffee & the feoffor shall hold the parties of the land in common. And in the same maner as is aforesaid of tenants in common, of landes or tenements in fee simple or fee taile. In the same maner may it be said of tenants for terme of life. As if two iointenantes be in fee, & the one letteth to a man that, that to him belongeth for terme of lyfe, and the other iointenaunt letteth that, that to him belongeth

longeth

longeth to another for terme of life, these two lessees bee tenauntes in commen for terme of their liues &c.

¶ Also if a man let landes to ij. men for terme of their liues, & the one graunteth al his estate of that, that vnto him belongeth to another &c. then that other tenant for terme of life, and he to whom the graunt is made be tenantz in common duringe the time ÿ both iu[illegible] be alyue.

¶ And it is to be remembred that in al other such cases though that they bee not here expresly named or specified, if they be in like reason they be in like lawe.

¶ Also if there be two iointenants in fee, and the one letteth that, that vnto him belongeth to another for terme of life, duringe his life & the other tenaunt that did not let, be tenauntes in commen. And vppon this case a question may ryse as this, Put the case that the lessour hath issue & dieth, lyuinge the other iointenant his felow, & liuing the tenant for terme of life, the question may be such if the reuersion of the halfe &c. ÿ the lessour hath, shal discend to the issue of the lessour, or ÿ the other ioyntenaunt shall haue it by the suruiuour. And some haue sayd in this case, that the other ioyntenaunt shall haue the reuersion by the suruiuour, and their reason is such. Whẽ the iointenãts were iointly seysed in fee simple &c. though the one of thẽ made estate of ÿ, ÿ vnto him belongeth for terme of life, & though that hee hath thereof frankētenement of that, that to him belongeth

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by the leale, yet hee hath not seuered the fee simple. But the fee simple abydeth to hym ioyntly as it was before. And so it seemeth vnto them that the other ioyntenaunt that survyueth, shall haue the reuersion by the surrumour &c. And other haue said the contrarye. and this is their reason, when one of the ioyntenaunts letteth this that to him belongeth to an other for terme of hys life, that by such leale the franktenement is seuered from the iovnture. And by the same reason the reuersion that is dependaunt vnto the same franktenement is seuered from the iovnture. Also if the lessour had reserued to hym a perely rent vpon the leale, the lessour onely shall haue the rent &c. The which is a prufe that the reuersion is onely in hym, and that the other hath nothing in the reuersion &c. Also if the tenant for terme of life were impleded &c. and made default after default, then the lessour shalbe only of thys receyued to defende his right, & his felowe in this case in no maner shalbee receyued, which proueth that the reuersion of the halfe is onely in the lessour. And so by consequens, if the lessour dye liuinge the lessee for terme of life the reuersion shall discende to the heires of the lessour &c. and not come to the other ioyntenant by the surumont. Ideo quere. What in this case if the ioyntenāt that hath the franktenement haue issue and dye liuinge the lessour and the lessee, then it seemeth that the issue shall haue the halfe in hys demeane as of

fee

fee by discent for this that the franktenement may not by nature of the iointure bee annexed to a reuersion &c. And it is certein that he that letteth, waas seysen of the halfe in his demeine as of fee, & none shal haue any iointure in hys franktenement. Ergo thys shall discend to issues. Sed quere. But if it be thus, þ the law in this case is such, þ if the iessour die leauing the iessee, & leauing the other iointenaunt that hath the franktenemẽt of the other halfe, that the reuersion shall descend to the issue of the iessour, then is the iointure & the title that any of thẽ may haue by the surrumour by the right of the iointure annulled & all vtterly defeated for euer.

¶ In the same maner it is if the iointenãt þ hath the franktenement die, leauing the iessour & the iessee, if the law be such that his franktenement & fee that he hath in the halfe shal discend to his issue, then the iointure shalbee defeated for euer &c.

¶ Also if three iointenants bee, & the one releaseth by his deede to one of his felows al þ right þ he hath in þ land, then hath he to whõ the release is made the third part of the lands by force of the release, & he and his felow shal hold the other ij. parties iointly. And as to the third part þ he hath by force of the release, hee holdeth the third part with him selfe, & his felowe in common.

¶ And it is to wit that sometime a deede of release shall take effect and shall bee in bye to

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put the estate of him ꝑ made ꝑ releas, to him to whom the release is made, as in the case aforesayd.

¶ And also if a ioint estate be made to ꝑ husband and his wife, and to a third parson, and the third person releaseth his right ꝑ hee hath &c. to the husband, then hath the husband the halfe that the thirde parson had, and the wife of this hath nothyng. And if in such case the thirde release &c. to the wife not namyng the husband in the release, then hath the wife the halfe that the thirde parson had. And the husband had nothing of this, but in right of hys wife, for this that in such case the release shal enure to put the estate to him to whom the release is made of all that, that belonged to him that made ꝑ release &c. And in some case a release shal enure to put all ꝑ right that he hath that made the release to him, to whom the release is made. As a manne seysed of certaine landes and tenementes, is disseysed by two disseysours, if the disseise by his deede release all hys ryght &c. to one of the disseysours, then hee to whom the release is made, shall haue and holde all the tenementes to him onelie, and put out hys fellowe of curtie occupation of it. And the cause is for this that the two disseysoures were seysed in the tenementes by wrong by them doone againſt the lawe. And when one of them hath the release of hym that had ryght to enter &c. thys right in such case resteth in him to whom the

release

releaſe is made, and is in ſuch plight as if hee that had the right had entred & enfeoffed hym &c. And the cauſe is for this, that he that hath before had an eſtate by wrong, that is to ſay, by diſſeyſin now by the releaſe hath a rightful eſtate.

¶ And in ſome caſe a releaſe ſhal enure by way of extinguiſhmēt, & in ſuch caſe ſuch releaſe ſhal help the tenant to whom the releaſe was not made, as wel as hym to whom the releaſe is made. And if a man be diſſeiſed, & ỹ diſſeiſour maketh a feoffemēt to ij. men in fee, if the diſſeiſi releaſe to one of the feoffours in fee by his dede, thē ſuch releaſe ſhal ēure to both the feoffees for this that ỹ feoffees haue eſtate by the lawe, ỹ is to ſay, by the feoffemēt and not by wrong done to any other.

And in the ſame maner it is, if the diſſeyſor make a leaſe to a manne for terme of lyfe, the remainder ouer to another in fee, if the diſſeiſy releaſe to the tenaunt for terme of lyfe all his right &c. This releaſe enureth as wel to hym in ỹ remainder as to ỹ tenant for terme of life &c. And the cauſe is for this, ỹ tenāt for terme of life cōmeth to his eſtate by the courſe of the law. And for this the releaſe ſhal ēure & take effect by way of extinguiſhment of the ryght of him ỹ hath releaſed &c. And by this releaſe the tenant for terme of life hath no greater eſtate then he had before the releaſe made vnto hym, & the right of him that releaſed is al vterlie extynct. And in ſo much that ſuch releaſe

releale cannot enlarge the ſtate of the tenaunt for terme of lyfe, it is reaſon that the releaſe ſhall enure to hym in the remaynder &c. Whose ſhall be ſayd of releales in the Chapiter of releale.

Alſo if there bee two parceners, and the one alieneth that ꝑ vnto hym belongeth to another, then the other parcener and the alienee be tenants in common.

Alſo tenants in common may bee by title of preſcription, if the one and hys auncеſtors, or they whoſe eſtate he hath in the halfe, haue holden in common, the ſame halfe with the other tenāt that hath the other halfe, and with his auncеſtors, or them whoſe eſtate hee hath as vndeuided from time whereof no memorie remeth. And diuers other maners may make e cauſe men to be tenants in common that be not here expreſſed.

Alſo, in ſome caſe tenāts in commō ought to haue of their poſſeſſion ſeuerall actions, and in ſome caſes they ſhal ioine in one actiō. For if there be two tenaunts in common, and they bee diſſeyſed, they ought to haue againſt the diſſeiſours two aſſiſes, e not one aſſiſe, for euerie of them ought to haue an aſſiſe of his halfe &c. e the cauſe is for this, ỹ tenants in cōmon were ſeyſed by ſeuerall titles, but otherwiſe it is of iointenaunts. For if there bee xx. iointenants e they be diſſeiſed, they ſhall haue in all their names but one aſſiſe, becauſe that they had but one ioint title.

Alſo

Also if there bee three ioyntenauntes and one releaseth to one of hys fellowes all the ryght that he hath, and after the other two be dilleised of the whole &c. in this case the other shall haue seuerall assises in this forme, ꝑ is to say, they shall haue in both their names one assise of the two partes &c. for this that they held the two partes ioyntlie at the tyme of the dilleyslit. And as to the thirde parte, her to whom the release was made ought to haue thereof an assise in his owne name, for this ꝑ as to the third part he is tenaunt in common &c. for this that her came to the third part by force of the release & not onely by force of the ioynture.

¶ Also as to sue actions that touche the roialtie, there is diuersitie betweene parceners that be vn by diuers discentes, and tenauntes in common. For if a man seysed of certayne landes in fee haue issue two daughters and die, and they enter &c. and eche of them hath issue a sonne & dieth without partition made betweene them by which the one halfe descendeth to the sonne of the one parcener, and the other halfe descendeth to the sone of the other parcener, and they enter and occupie in common & be dilleysed, in this case they shall haue in their two names one assise and not two assises. And the cause is, that though they come in by diuers discentes &c. yet they be pceners & a writ de Partitione facienda lieth betweene thē. And they be not pceners hauing regarde

or respect onely to the seysin and possession of their mothers, but they be parceners hauyng more respect to their estate that descended of their graundfather to their mothers. For they may not bee parceners where their mothers were not parceners before &c.

¶ And so to such respect and consideration, that is to witte, as to the first tytle that was to their mothers they haue a tytle in parcenary, the which maketh them parceners. And also they be but as one heire to their comon ancester that is to say, to their graundfather from whom the land descended to their mothers. And for these causes before partition betweene them &c. they should haue one assyse though they come in by seuerall discentes &c.

¶ Also if there be two tenaunts in common of certaine landes in fee, & they gyue the same lande to another man in the tayle, or let it to another man for terme of lyfe, yelding an annuitie or certaine rent, and a pound of pepper or an hawke, or an horse, and they bene seysed of these seruices & after all the rent is behind, and they distraine for it, and the tenaunt maketh them rescous:

¶ In that case as to the rent and the pound of pepper, they shall haue two assyses, and as to the hawke and the horse but one assise, and the cause why they haue two assyses as to the rent and pounde of pepper is this, in so much that they were tenaunts in common by seuerall tytles, and when they

made

made a gift in the taple or leale for terme of lyfe &c. sauing to thē the reuertion & yelding to them certaine rent &c. Such reseruation is incident to their reuertion.

¶ And for this ỳ their reuertion is in common and by seuerall tytles, as their possession was before the rent, and other tynges that may be seuered and were to the reserued vpon the gift or vpon the leale which be incydent by the law to the reuertion, such thinges so seuered were of the nature of the reuertion, which reuertion is to them in common by seueral titles. And it behoueth that the rent of the pound of pepper which may be seuered is to them in common by seueral tytles. And of this they shal haue two allyses, and euery of them in his allise shal make his plaint of the halfe of the rent and of the halfe of the pound of pepper &c.

¶ But of the hawke and the horse which cā not be seuered, they shal haue but one allyse. For a mā may not make a plaint in allise of ỳ halfe of an hawke or of ỳ halfe of an horse &c. In the same maner it is of other rentes and seruices that tenants in cōmon haue in grosse by diuers titles.

¶ Also as to actions personels, tenauntes in common ought to haue such actions personels ioyntly in all their names, that is to say, of Trespas, or of offences that touche their tenauntes in common. As of breakyng of their houses, breakyng of their closes, and

pastures wasting & defoulding of their grasse, cutting of their wood, and to fishe in their pondes, & such other. In this case tenaunts in cõmon shall haue one action joyntly & recouer joyntly damages: because that the action is in the personaltie and not in the realtie.

¶ Also if two tenaunts in cõmon make a lease of their two tenementes to another for terme of yeres yelding vnto them yerely a certaine rent, if the rent be behynde &c. the tenants shall haue one action of debt against the lesse and not ayuers actions, for that the action is in the personaltie.

¶ Also tenants in cõmon may make partition betweene them yf they will, though they shall not be compelled by the lawe. But if they make partition betweene them by their agreement and assent, such partition is good enough, as it is adiudged in y booke of assises, 9. E. 4.

¶ Also as there be tenaunts in cõmon of landes or tenements &c. as is aforesaid. In the same maner there bee possessions and properties of chattel real and chattel personal. As if a lease be made of certaine landes to two men for terme of xx. yeres, & when they bee therof possessed, the one of the lessers graunteth that, y vnto him belongeth before the terme to another, then hee to whõ the graut is made & the other shal hold & occupy in common.

¶ Also if two iointenantes haue the ward of the body & of the landes of the child within age,

age,and that one of them graūteth to another that,that vnto him belongeth of ꝑ ſame ward then the graūtee and the other that graunteth not ſhal haue and hold it in common,&c.

¶ In the ſame maner it is of chatels perſonals,as if two haue a ioynt eſtate by gyft or by buyinge of an hors or an Ore &c.the one of them graunteth that,that to him belongeth of the ſame horſe or ore &c. Then the graūtee & he that graunted not ſhall haue and poſſeſſe ſuch chattell perſonall in common &c. And in ſuch caſes where diuers perſons haue chatels reals or perſonals in cōmon and by diuers titles,if the one of them dye, the other that ſurvyueth ſhall not haue that by the ſurvyuour. But the executours of him that dyeth ſhall holde and occupy that with him ꝑ ſurvyueth as their teſtatour dyd or ought in his lyfe. &c.for this that their titles and ryght in this caſe were ſeuerall.

¶ Alſo in this caſe aforeſayde if two haue eſtate in common for terme of yeres,& the one occupy al and put the other out of his poſſeſſion and occupation,Then ſhal he that is put out of occupation haue againſt that other a writ de Eiectione firme for the halfe agaynſt the other. In the ſame maner it is where two holde the wardſ of landes or tenementes duringe the nonage of a child,if one put out the other of his poſſeſſion,he that is out ſhal haue a writ of Eiectment de garde of the halfe for this that thoſe thinges be chatels reals.

pastures walking & defoulyng of their grasse, cuttyng of their wood, and to fysshe in their pondes, & fysh ether. In this case tenaunts in cõmon shall haue one action ioyntly & recouer ioyntly dãmages because that the action is in the personaltie and not in the realtie.

¶ Also if two tenaunts in cõmon make a lease of their two tenementes to another for terme of yeres yeldig vnto them yerely a certaine rent, if the rent be behynde &c. the tenãts shall haue one action of debt agaynst the lesse and not dyuers actions, for that the action is in the personaltie.

¶ Also tenants in cõmon may make partition betwetne them yf they will, though they shall not be compelled by the lawe. But if they make partition betwene them by their agreement and assent, such partition is good ynough, as it is adiudged in y bookes of assises, 20. E. 4.

¶ Also as there be tenaunts in cõmon of landes or tenements &c. as is aforesaid. In the same maner there bee possessions and properties of chattel real and chattel personal. As if a lease be made of certaine landes to two men for terme of xx. yeres, & when they bee therof possessed, the one of the lessers graunteth that, y vnto him belongeth before the terme to another, then hee to whõ the graut is made & the other shal hold & occupy in common.

¶ Also if two iointenantes haue the ward of the body & of the landes of the child within age,

age, and that one of them graunteth to another that, that vnto him belongeth of ꝑ same ward then the graūtee and the other that graunteth not shal haue and hold it in common, &c.

¶ In the same maner it is of chatels personals, as if two haue a ioynt estate by gyft or by buyinge of an hous or an Ore &c. the one of them graunteth that, that to him belongeth of the same house or ore &c. Then the graunte & he that graunted not shall haue and possesse such chattell personall in common &c. And in such cases where diuers persons haue chatels reals or personals in cōmon and by diuers titles, if the one of them dye, the other that suruyueth shall not haue that by the suruyuour. But the executours of him that dyeth shall holde and occupy that with him ꝑ suruyueth as their testatour dyd or ought in his lyfe. &c. for this that their titles and ryght in this case were seuerall.

¶ Also in this case aforesayde if two haue estate in common for terme of yeres, & the one occupy al and put the other out of his possession and occupation, Then shal he that is put out of occupation haue against that other a writ de Ejectione firme for the halfe against the other. In the same maner it is where two holde the warde of landes or tenementes duringe the nonage of a child, if one put out the other of his possession, he that is out shal haue a writ of Ejectment de garde of the halfe for this that those thinges be chatels reals.

and may be apportioned and severed &c. But no such action of trespas, ꝑ is to say. Quare clausum suum fregit & herbam suam concalcauit et conculcauit &c. And no such like actions the one may not have against the other, for this that eche of them may enter and occupy in cõmon &c. through and by all the tenementes which they holde in common. But yf two be possessed of chatels personels in cõmon by diuers titles, as of an horse, or an ore, or a howe yf the one take it all to hymselfe out of ꝑ possession of the other, the other hath none other remedy but to take this of him that hath done to him the wronge for to occupy in common when he may see his time.

¶ In the same manner it is of chatel real that may not be severed as the case aforesayd two be possessioners of a ward of the body of a childe within age, if one take the childe out of the possession of the other, the other hath no remedy by any action by the lawe, but to take the child out of the others possession when he seeth his time &c.

¶ Also when a man in pleding will shewe a deede of feoffement made vnto hym, or a gyft in the tayle, or a lease for terme of lyfe of any landes or tenementes, there he shal say by force of which feffement, gyft or lease he was seised &c.

But where a mã will plede a lease or a grãt made vnto hymself a chattel real or personel, there shal say by force of which he was possessed,

More

More shalbe said of tenauntes in common in ỹ Chapiter of Releales, Cõfirmatiõs, & Tenauntes per Elegit.

¶ Estates vpon condition.

Estates ỹ men haue in landes or tenemẽtes be in two maners. That is to say, they haue estate vpon condition in dede or vppon condition in lawe. Vpon condition in dede, is as a man by dede indẽted enfeoffeth another in fee reserving to him & to his heires yerely a certain rẽt payable at one feast or at diuers festes by yere, vpon condition ỹ if the rẽt be behinde &c. ỹ it shalbe lawfull to the feoffour & to his heirs to enter in the landes or tenemẽtes &c.

¶ Or if the lande be alienes to another in fee, to yeld vnto him certain rent &c. And yf it hap that the rent be behinde by a weeke after any day of paymẽt of it, or by a moneth, or by a halfe yere after any day of payment, that than it shalbe lawfull to the feoffour & to hys heires to enter &c.

¶ In this case if the rent be not payde at such a time or before such a time limitted and specified within ỹ condition compyled in the indenture, thẽ may ỹ feoffour or his heires enter into such lãdes or tenements, & thẽ in hys first estate to haue and to holde, and of this to put the feoffee cleane out, and it is called estate vppon condition. for thys that the

estate of the feoffee is defeyfible if the condition be not performed.

¶ In the same manner it is if landes be geuen in the tayle, or let for terme of lyfe, or for terme of yeres, vppon such condition &c. But where a feoffement is made of certaine landes reseruing certayne rent vppon such condition that if the rent be behinde, that it shalbee lawfull to the feoffour and his heires to enter, and the lande to holde tyll they bee satisfyed or payed of their rent behinde &c. In thys case if the rent be behind and the feoffour and hys heires enter, the feoffee is not excluded cleane out. But the feoffour shall haue and holde the lande and take the profites till that hee be satisfied of the rent behinde. And when he is satisfied, the feoffee may reenter in the same land and holde it as he did before, for in such case the feoffour shal haue it but in maner for a distresse in the meane time, til he be satisfyed of the rent &c. though he take the profites in the meane tyme.

¶ Also dyuers wordes amonge other there be that by vertue of themselfe make estate vpon condition. One is this worde of condition as A. enfeoffeth B. of certaine land, to haue and to holde to the same B. and his heires vppon condition that the same B. and his heires shal pay or do to be payed to the foresayde A. and to his heires yerely such rent &c. In these cases without any more sayinge the feoffee hath estate vpon condition. Also if the condition were such

ſuch: Wouldeth alſoay that the aforeſaide W. pay or doe to be payd to the aforeſayde T. ſuch rent. Or if they were thus, ſo ỹ the aforeſayd W. pay or doe to be payed ſuch rent. In theſe caſes without any more ſaying ỹ feoffe hath eſtate but vpon condition, ſo ỹ if he performe not the condition the feoffour and his heires may enter &c.

¶ Alſo other wordes there be in a dede that ſemeth the tenements to bee conditionels, as vpon ſuch a feoffement a rent is reſerued to the feoffour &c. & after it is put in ỹ dede that if it chaunce the aforeſayde rent to bee behinde in part or in all &c. that then it ſhalbe lawfull to the feoffour and to his heires to entre. And this is a dede vpon a condition. But there is diuerſitie betweene the wordes if it chaunce. &c. and the wordes next aforeſayde. For thys worde if it chaunce &c. is nought worth to ſuch condition, but if it haue theſe wordes followyng, that is to ſay, that it ſhalbe lawfull to the feoffour and to hys heires to enter &c. But in theſe caſes aforeſaid it needeth not by the lawe to put ſuch clauſe, that is to ſay, that the feoffour and hys heires may enter &c. for this that they may ſo doe by force of the wordes aforeſayed, becauſe they conteyne in them ſelfe in the lawe a condityon, that is to ſaye, that the feoffour and his heires may enter. Yet it is common in all ſuch caſes aforeſayde to put ſuch clauſes in the dedes, that is to ſay, if the rent bee behinde

&c.

&c. that it shalbe lawfull to the same feoffour and his heires to enter &c. And this is well done to that intent for to declare and expresse to the lay men that be not learned in the lawe, the maner and the condition of the feoffement &c. As a man seised of lande as of franktenement, let the same land to another by dede endented for terme of yeres, yeldinge vnto hym certain rent, it is vsed to put in the deede that if the rent be behinde at the day of payment by a moneth &c. That then it shalbe lawfull to the lessour to distrain &c. and yet the lessour may distraine of common right for the rent behinde &c. though such wordes neuer were set in the deede &c.

¶ Also if a feoffement bee made vppon such condition, that if the feoffour pay at a certaine day x.c.li. of money, that then the feoffour may enter &c. In this case the feoffee is called tenaunt in mortgage, whiche as much to say in frenche as mortgage, vadium latine mortuū vadiū, and in Englishe a dead pledge. And it semeth that the cause why it is called mortgage, is for that standeth in doubt if the feoffour will pay at the day limited such a summe or not and if he pay not, then the land that is put in pledge vpon condition for the payment of the money is gone from him forever, & so dead as to the tenant &c.

¶ Also as a man may make a feffement in fee in mortgage, so may a man make a gift of the tayle in mortgage, and a lease for terme

of

of life, or for terme of yeres in mortgage. And al such tenantes be tenantes in mortgage after the state that they haue in the landes &c.

¶ Also if a feoffement bee made in mortgage vppon condition that the feoffour shall paye such a summe at such a day &c. as is betweene them by their deede endented accorded and limited, though the feoffour dye before the day of payment &c. yet if the heire of the feoffour pay the same summe within the day to the feoffee, or proffer him the money, and the feoffee refuseth to receiue it, then may the heire entre into the landes. And yet the condition is, if the feoffour pay such a summe at such a day &c. and not making mention in the condition of any payment to bee made by his heire, but for this that ỹ heire hath interest of right in the condition &c. and the intent was but that the money shoulde bee payed at such a day set &c. and the feoffee hath no more dammage to be payed by the heire, then though he were payed by the father &c. for this cause if the heire paye the money or tenderth the money at the day set &c. and the other refuseth it, he may well enter. But if a straunger of his owne head that hath no interest &c. would also tender and pay the money at the day set, then the feoffee is not bounde to receiue yt &c.

¶ And it is to be had in minde that in such case where such lawfull tender of the money is

is made and the feoffee refuseth to receyue it, wherefore the feoffour or his heires do enter &c. then the feoffee hath no remedy to haue the money by the common lawe, for this ꝑ it shal bee rected his owne folly that he refused the money when lawefull proffer was made of it vnto him &c.

¶ Also if a feoffement bee made in such condition, that if the feoffee pay to the feoffour at such a day betweene them limited xx li. ꝑ then the feoffee shall haue the land to him and to his heires, and if he faile to pay the money at the day &c. ꝑ then it shalbe lawfull to the feoffour or to his heires to enter &c. and if after before the day set, the feffee selleth ꝑ land to another, and therof maketh a feoffement vppon him, in this case if the second feffee will tender ꝑ some of money at the day set to the feoffour, and the feoffour refuseth it &c. then hath the seconde feoffee estate in the lande clerely without condition. And ꝑ cause is for that ꝑ second feoffe had interest in the condityon for saluation of his tenaunce. And in this case it semeth that if the first feoffe after such sale of the land will tender the money at the day set &c. to the feoffour, that shalbee good ynough for the saluation of the estate of the seconde feoffe, for thys that the first feoffe was ptny to the condityon. and so the tender of any of them is good ynough &c.

¶ Also if the feffemēt be made vpon condition, that if ꝑ feoffor pay a certain sume of money

to

to the feoffee, that then it shalbe lawful to the feoffour and to hys heyres to enter &c. In this case if the feoffour die before the day of payment, & the heire will tender to the feoffee the money, such tender is voide, for that that the tyme within which the tender ought to bee made is past. For when the condition is, þ if the feoffour pay the money to the feoffee, this is as much to say, that if the feoffour during hys life pay the money to the feoffee &c. And when the feoffour dyeth, the the tyme of the tender is past. But otherwise it is where a day of payment is limitted, and the feoffour dieth before the day, then may the heire tender the money as it is aforesayde, for elles at the tyme of the tender was not past by the death of þ feoffor. Also it semeth in such case where the feoffour dyeth before the day of payment, if the executors of the feoffour tender the money to the feoffee at the day of payment, the tender is good ynough. And if the feoffee refuse hyms the heires of the feoffor may enter &c. And the cause is for this that the executours represent the persō of their testator &c. And note wel, þ all such cases of cōditiō of paymēt of certayne sūme in grosse, touching lands or tenementes if lawfull tender be once refused, hee þ ought to pay þ money is thereof alloyed & clearely discharged for euer after.

¶ Also if the feoffee in mortgage before þ day of paymēt that shalbe made vnto hī make his executors & die, þ hys heire ētre into the land

as

as he ought. It semeth in this case ỳ the feoffour ought to pay the money at the day set to the executours, & not to the heire of the feoffee for this that the money at the begynning belonged to the feoffee in manner as a dutie. And shalbee vnderstand that the estate was made because of borowing of the money of the feoffee, or because of another dutie. And for this the paiment shall not be made to the heire of the feoffee as it semeth. But the wordes of the condition may be such, ỳ the paiment shalbe made vnto the heire as if the condiciõ were ỳ the feoffor pay to the feoffee or to his heires such a sum at such a day &c. There after the death of the feoffee if hee die before the day ymitted, the the paiment ought to bee made to the heire at the day set &c.

Also in such case of a feoffment in mortgage a question hath been demaunded in what place the feoffour is bound to render the money to ỳ feoffee at the day set &c. And some haue said that vpon the land so holden in mortgage for this that the condition is dependant vpon the land, and they haue said ỳ if the feoffour bee ready vpon the land to pay the money at the feast or day set, and the feoffee bee not at that time there, ỳ then the feoffour is excluded & discharged of paiment of the money, for this ỳ no default was in him, but it semeth to sõe me ỳ the law is contrary, & the default is in him. For he is bound to seeke the feoffee if he be thẽ at any time in any manner of place within the

realme

realme of Englande. As if a man be bound in an obligation of xx.li. vpō condition endorſed vpon the obligation that if he pay to vpon to whom the obligation is made at ſuch a day x.li. that then the obligation of xx.li. ſhall lose his force & ſhalbe holden for nought, in this caſe it behoueth him that made the obligatiō to ſeeke him to whō the obligation is made, if hee be within England, and at the day ſet, to tender to him the ſaid x.li &c. And otherwiſe he forfaiteth the ſūme of xx.li. compriſed within the obligation, and ſo it ſeemeth in the other caſe &c. And though ỹ ſome haue ſayde ỹ the condition is dependaunt vpon the lande yet this is not proued that the reſeiuer of the condition to be performed ought to bee made vpon the land &c. ffor more then if the condytiō were that if the feoffor ſhould do at ſuch a day &c. an eſpecial corporal ſeruice to ỹ feoffee not naming the place where the corporal ſeruices ſhould be done. In this caſe the feoffour ought to do ſuch corporall ſeruice at the day limit to ỹ feoffee in what ſoeuer place in England that the feoffee be, if he will haue aduauntage of the condition &c. And ſo it ſeemeth in that other caſe. And it ſeemeth to them that it ſhalbee more properly ſaied that the eſtate of the lande is dependaunt vpon the condition &c. which is as much to ſay, that the condition is dependaunt vpon the ſaid &c. but enquire &c.

¶ But if a feoffement in fee be made reſer-

uyng

wyng to the feoffour an annuel rent, & for de-
faute of payment a reentre &c. in this caſe it ne-
deth not to the tenant to tender the rent wh̄
it is behynde, but onelie vpon the lande. for
thus that this is a rent going out of the land,
for thys is rent iecke. For if the feoffour bee
once ſeiſed of this rent, and after hee commeth
vpon the land &c. and the rent is denied hym
&c. he may haue an aſſiſe of nouel diſſeiſin, for
though he may enter becauſe of the condition
broken, yet he may chooſe, that is to ſay, to en-
ter or to haue an aſſyze. And ſo is there diuer-
ſitie as to the tender of the rent that is goyng
out of the land and of tender of another ſume
in groſſe which is not going out of any land.
And therefore it ſhalbe ſure and a good thing
for them that will make ſuch feoffement in
mortgage, to put and ſet a ſpecial place where
the money ſhalbe payde. And the more ſpecy-
al that it is put, the better it is for the feoffor.
As if A. enfeoffe B. to haue to hym and to
hys heyres vpon ſuch condition, that yf A.
pay to B. in the feaſt of ſaynt Michael the
archangel next comyng in ỹ cathedral church
of S. Paule of London within 4. hours next
before the houre of none of ỹ ſame feaſt at the
rode loft of the North dore within the ſame
church or any other certaine place within the
ſame church, that then it ſhalbe lawfull to the
foreſayd A. and to hys heyres to enter &c. In
ſuch caſe it needeth not to ſeeke the feoffee in
anie other place but in the place comprysed

in the

in ꝑ indenture not to be there more lōger time then the time ſpecified in the ſame indenture, for to render or pay the money to the feoffee.

¶ Alſo in ſuch caſe where the place of payment is limitted, the feoffee is not bound to receiue the paimēt in none other place, but in the place ſo limitted. But yet if he receiue the paiment in any other place, this is good ynough and as ſtrong for the feoffour, as if the reſceit had bene in the place ſo limitted &c.

¶ Alſo in this caſe of feoffemēt in mortgage, if the feoffour pay the feoffee an hoꝛſe or a cup of ſiluer, or a ring of golde, or ame other ſuch thing in full ſatisfaction of the money, and the other this receiueth, this is good ynough, and as ſtrong as if he had receiued the ſumme of money, though the hoꝛſe, or ame of the other thynges bee not the twentith part worth in value of the ſumme of money, for this that the other hath accepted it in plaine and full ſatisfaction.

¶ Alſo if a man enfeoffe an other in fee vpon condition that hee and his heires ſhall yelde to a ſtraunger and his heires a yeareſie rent of xx.s. and if hee and his heires fayle of payment of thys, that then it ſhalbe lawful to the feoffour and to his heyres to enter, thys is a good condition. And yet in this caſe though ſuch a yeately rent bee called an annuel rent, this is not properly a rent, for if it ſhalbe ſet, it ought to bee rent ſcruice, rent charge, or rent ſecke, & yet is none of them, for if the ſtraun-

ger were seyled of this, & after it were to him
demyed, he that nowe have an assise of this, for
this that it sheweth not out of ante landes, and
so the straunger hath no remedy if any such
yerely payment bee had behynde in thys case,
but that the feoffour and his heires may en-
ter &c. and yet if the feoffour and his heirz en-
ter for defaut of payment, then such rent is
gone for euer. And so such rent is but a pay-
ment set to the tenaunt and to his heires, that
if they will not pay this after the forme of the
indenture, that they shall leese their lande by
the entre of the feoffour or his heires for defaut
of payment. And in thys case it seemeth that
the feoffee and his heires ought to seeke the
straunger and his heires if they bee in Eng-
land, because that no place is limitted where
the payment shalbee made, and because that
such rent is not going out of any land &c.

¶ And here note wel ij. things, one is, that
no rent that is properly sayd rent may bee re-
serued vppon anie feoffement, gift, or lease, but
only to the feoffour or to the lessour, or to their
heirz, & in no maner may bee reserued to anie
strange person. But if ij. tenenantes make a
lease by deede indēted, reserung to ẏ one a cer-
taine yerely rent, that is good ynough to him
to whom the rent is reserued, for this that he
is priuie to the lease and not a stranger to this
&c. The second thing is, that no entre or reen-
tre which is all one, may be reserued nor gee-
uen to anie person, but onelie to the feoffour

or

or to the donour of to the leſſour, or to their heires, and ſuch entre may not bee aliened nor graſted to any ꝓſon. For if a man let lãds to another for terme of life by indenture, yelding to ꝑ leſſour & to his heires a certein rent, & for defaut of payment a reentre &c. if after ꝑ leſſor by a deede graunt the reuerſion of the land to another in fee, & the tenãt for terme of life attorneth &c. if the rent after be behynd, the grãtee of the reuerſion may diſtraine for the rent, for this ꝑ the rent is incident to the reuerſiõ, but hee may not enter into the land & put out the tenant as the leſſour myght or his heires if the reuerſion had ben continued in them &c. And in this caſe the entre is take away at all times, for the grauntee of the reuerſion may not enter Cauſa qua ſupra. And the leſſor nor his heires may not enter, for if the leſſor may enter, then he ought to bee in his firſt eſtate &c. and that may not bee, for this that hee hath from him the reuerſion &c.

Alſo if there be lord and tenaunt, and the tenant make ſuch a leaſe for terme of lyfe, yelding to the leſſour & to his heires ſuch yerely rent, and for defaut of payment a reentre &c. if after the leſſour die without heire, during the ſtate of the tenaunt for terme of lyfe, by which the reuerſion commeth to the Lorde by way of eſcheate, and after the rent of the tenaunt for terme of lyfe is behynde, the lorde may diſtraine the tenant for the rent behynde, but he may not enter into the land by force of

the condition &c. for this ỹ hee is not bound to the fealtie &c.

¶ Also if land be graūted to a man for terme of yeares vpon condition, ỹ if hee pay to the graūtour x̄ in ij. yeres xl. marbes, ỹ then hee shal haue the lād to him & to his heires &c. In this case, if the graūtee enter by force of the graunt, & after he payeth to the graūtour xl. marbes x̄ in the ij. yeres, yet he hath nothing in the lād but for terme of the ij. yeres, for this ỹ no liuery of seisin was to him made at the beginning, for if hee had had franktenement & fee in this case because he hath performed the condition, then should he haue franktenement by force of the first graunt where no liuery of seysin was made thereof, which should bee against reaſō &c. But if the graūtor had made liuery of seisin to the grauntee by force of the graūt, then hath the graūtee the franktenemēt & the fee vpon the same condition.

¶ Also if lands be graunted to a man for terme of fyue yeres, vpon condition that hee pay to the grauntour within the first two yeres xl. marbes, that then hee shal haue fee, or els but for terme of the fyue yeres, and liuerie of seysin is made to him by force of the graūt. Now hee hath a fee simple condicionel &c. & if in this case the grauntee pay not to the graūtour the xl. marbes within the same two first yeres, thē immediatly after the sāe two yeres the fee and the franktenement is and shalbee adiuged to the grauntour, for thys that the graun-

graūtour may not after the two yeres incō-tinent enter vpon the grauntee, for thys that the grauntee hath yet ryght by thre yeres to haue and to occupy the land by force of ẏ same graunt. And so for this, that the condition of parte of the graunte is broken, and the grauntour may not enter, the law shall put the fee & frankteneměts in the grauntour. For if ẏ grātour in this case made wast, then after the breaking of the cōdition &c. And after the two yeres the grauntour shall haue his wrytte of wast, and this is a good proof that the reuersion is to him &c. But in such case of feoffementes vpon condition where the feffour may enter lawfully for the condition broken &c. There ẏ feffour hath ẏ frankteneměts before the entre &c.

¶ Also if a feoffement bee made vppon such condition ẏ the feoffee shall geue the land to the feoffour, and to the wyfe of the feoffour, to haue and to holde to them and to the heires of their two bodies engendred, and for defaute of such issue, to remayne to the ryght heires of the feoffour. In this case if the husbande die, liuinge the wyfe before estate in the tayle made to him, then ought the feoffee by the lawe to make estate to the wyfe, as lyke to the condition, and as lyke to the entent of the condition as hee may make it, that is to say, to let the lande to the wyfe for terme of lyfe wythout impechement of wast, the remainder after her deceas to the heires engen-

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hed of the body of her husbande & hers, & for default of such issue, the remainder to the right heires of the husband.

¶ And the cause why ỹ lease shalbe made in this case to the woman sole without empechmēt of waste is for this that the condition is, ỹ the state shalbe made to the husband & his wife in the taile. And if such estate had bē made in the life of ỹ husband, then after ỹ death of her husband she hath estate in the taile sole, which estate is without impechment of waste, & so it is reason ỹ if after a man may make estate to the intent of the condition &c. ỹ he shal make it &c. though that she cannot haue estate in the taile as she might haue had, if the gift in the tayle had bē made to the husband, & to her in the life of her husband &c.

¶ Also in this case if ỹ husbād & ỹ wife haue issue & die before the gift in the taile made vnto him &c. then ought the feffee to make estate to the issu & to the heirs of the father & mother ingendred, & for default of such issue &c. the remainder to the right heirs of the husbande &c. And the same lawe is in other cases semblable. And if such a feoffee will not make such estate whenche is reasonably required by them that ought to haue estate by force of ỹ condition &c. Then may the feffour & his heires enter &c.

¶ Also if a sedlement bee made vppon condition that the feoffee shal enfeoffe many men, to haue and to holde, to them and to their heires for euer, & all they that ought to haue

haue estate, by before any estate made vnto the, then ought the feoffee to make the estate to ꝑ heires of hi ꝑ surmueth of the, to haue & to hold to him and the heires of him that surmued &c.

¶ Also if a tefement be made vpon condition to enfeoffe an other, or to geeue in the tayle to an other &c. if the feoffee before the performing of the condition enfeoffe a straunge person, or make a lease for terme of life, then may the feffour and his heires enter &c. for this, that hee hath disabled him selfe to performe the condition, in so much that he made estate to an other &c. In such manner it is, if the feoffee before the condition performed, let the same land to a straunger for terme of peres: In this case the feffour or his heires may enter &c. for this that the feffee hath disabled hym selfe to make estate of the tenementes accordinge to that, that was in the tenements when estate therof was made vnto hym, for yf hee will make estate accordinge to the condition &c. then may the feoffee for terme of peres enter and put out him to whom the estate is made &c. and to occuppe this duringe his terme. And many haue saide, that if such a feoffement bee made to a man sole vppon the same condition, and before that hee hath performed the condityon hee taketh a wife, then the feffour or hys heire may incontinent enter, for thys that if hee haue made estate accordinge to the condytion, and after dyeth, his wife shalbee endowed and may recouer her dower by a writ of

power &c. And so by taking of a wife, the tenements be put in other plits than they were at the time of the feoffement vpon condition, for this that no such a woman was knowable, nor should be endowed by the law &c.

In the same manner it is if the feoffour charge the lande by his deede of rent charge before the performing of the condition, or be bounde in a statute staple, or the like marchant, that in such cases, the feoffour and his heires may enter, Causa qua supra. For wholoeuer commeth to the tenements by the feoffement of the feoffee, then the tenementes must be lyable, and be put in execution by force of the same aforesaid. But when the feoffour or his heires, for ỹ causes aforesaid haue entred so as they ought as it seemeth &c. Then al such things that before such entre may trouble or incumber the tenements so geuen vpon condition, as touching ỹ same tenement be vtterly defeted &c.

¶ Also if a man make a deede of feoffement to an other, and in the deede is no condition &c. And when the feoffour will make to him liuery & seysin by force of the same deede, he maketh liuery of seisin vpon certayn conditions &c. In this case nothing of the tenementes passeth by the deede, for this ỹ the condition is not cõprised in the deede, & the feffement is of such force, as if no such deede had be made therof &c.

¶ Also if a feffement be made vpon such cõdition, ỹ the feffee shal not alien ỹ land to any man, this cõdition is voide, for this, that euery

a man

a man is enfeoffed in landes or tenementes, he hath power to alien them to some person by the lawe. For if such condition should be good, then the condycion putteth him out of all the power that the lawe geueth, whych should be against reason, and for this, such condition is voyde. But if the condycion be such that the feoffee shal not alyen to one such mannage his name, or to any of his heires, or his issues &c. or such other lyke the which condition taketh not away all the power of alienation of the feoffee &c. then such condition is good.

¶ Also if tenementes bee geuen in the tayle, vpon such condycion that the tenaunt in the tayle, nor his heires &c. shall not alyen in fee, nor in tayle, nor for terme of another's lyfe but for their owne lyues &c. such alienation & condition is good. And the cause is for this. that when hee maketh such alyenation and discontinuance, hee doth contrary to the entent, for which the statute of Westminster the seconde was made, by which estaute, the estates in the tayle bee ordayned, for it is noted by the wordes compyled in the same estatute, that the entēr of the making of ỹ same statute was that the will of ỹ donour in such cases should be obserued. And when tenaunt in ỹ taile maketh such discontinuaunce, he doeth the contrary to that &c. And also in estates in the tayle of any tenementes when the reuertion of ỹ fee simple is in another ꝑson whē such discontinu-

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ance is made then the fee simple in the reuersion, or the fee simple in the remainder is discontinued and for to put out that ỹ tenant in the taile shal doe no such thing, against right such conditions ar good, as it is aforesayd &c.

¶ Also a man may geue land in the taile vpon such condition, that if the tenaunt in the tayle or his heirs alien in fee, or in taile, or for terme of anothers lyfe &c. And also that if all the issues comming of the tenaunt in the taile, bee dead without issue, that then it shalbe lawfull to the donour & to his heires to enter &c. And by such way the ryght of the tayle may bee saued after such discontinuance to the issu in the taile if there be any, so that by way of entre of ỹ donour or of his heires ỹ taile shal not bee defeated by such condition, & yet if ỹ tenant in the taile in this case or his heires make any discontinuance &c. he in ỹ reuersion or his heirs after ỹ time that ỹ taile is determined for default of issue &c may enter into the land by force of ỹ same condition and shal not bee driuen to sue a writ of formedon in the reuersion.

¶ Also a man may not pleade in an action that estate was made in fee, or in taile, or for terme of lyfe vpon condition, but if he vouche a record thereof, or shew a writing vnder seale, proouing the same condition, for it is a comon erudition & learning, ỹ a man by pleading shal not defeat any estate of franketenement by force of any such condition, but if hee shew ỹ proofe of such condition in writing &c. except it bee in

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some especiall case, but of chatels reals, as of a lease made for terme of yeres, or of graūtes of wardes made by wardeins in chiualry, & of such other &c. A man may plede ỹ such giftes or graūtes were made vppon condition &c. Without shewing of any writing of condition, & in the same maner a man may doe of giftes and grauntes of chatels personels & of contractes personels &c.

¶ Also though ỹ a man in some action may not plede an action that toucheth & concerneth franketenement without shewing of writinge therof, as it is aforesaide, yet a man may be holpen vppon such condityon by the verdyt of twelue mē taken at large in Assise of disseisin, or in some other action where ỹ Justices will take the verdit of the twelue iurrours at large. As put the case that a man seised of certaine land in fee, letteth the same lande for terme of lyfe without deede, vppon condition to yelde to the lessour a certeine rent, and for default of payment a reentre &c. by force of which, the lessee is seysed as of franketenement, and after the rent is behinde, by which ỹ lessour entreth into the land, & after the lessee arraigneth an assise of nouel disseisin of ỹ lande against the lessour, the which pleadeth that he hath no wrong, ne no disseisin, & vpon this the assise is taken.

¶ In this case the recognitours of the assise may say & yeld to the Justices their verdit at large vppon al the matter, as to say that the

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defendaunt was seised, & so seysed let the same land to the plentiffe for terme of his life, to yeld to the lessour such annuel rent payable at such a feast & vpon such condicion, þ if the rent shuld behinde at any such feast þat ought to be paid, þ then it shulde lawfull to þ lessour to enter &c. by force of which lease þ plentiffe was seysed in his demesne as of freehold & estatement, & after þ rent was behinde at such a feast in such a yere & day in which the lessour entred into the lande vpon the possession of the lesse, & putteth þ discretion of the Justices, if this be a disseisin done to þ plentiffe or not. And then to this þ it appereth to the Justices, that this was no disseisin done to the plentiffe, in so much þ the entre of the lessour was lawfull vpon him, the Justices ought to geue iudgement, þ the plentiffe shall take nothinge by his writ of assise. And so in such case the lessour shalbe holde, & yet no writing was neuer made of the condition, for as soone as the lessour may haue knowledge of the condition þ was declared & rehearsed vpon the lesse. In the same manner is of tenancies at will vpon gift in the taile vpon condicion, though neuer writinge were made thereof &c. And as it is said of a verdit at large in assise &c.

¶ In the like manner it is of a writ of entre founded vpon disseisin, and in all other actions where the Justices will take a verdit at large there to haue the verdit at large maketh þ nature of the matter put in the issue.

¶ Also

¶ Also in such case where the issues may lay their verdict at large, if they will take vpon them the knowledge of the issue vpon the matter, they may say their verdict generall, as it is put in their charge, as in the case aforesaid they may well say that the tenor delivered not the lease at the day &c.

¶ Also in the same case, if the case were such that after this that the lessour had entred for default of payment &c. that the lessee had entred vpon the lessour, and him ousted. In this case if the lessour arraigneth an assise against the lessee, the lessee may barre him of his assise, for hee may plede against him in barre, howe the lessour that is plaintife made a lease to the defendant for terme of life, leaving the reuersion of the plaintife. the which is a good plee in barre, in so much that he knoweth the reuersion to bee to the plaintife, and in this case hath no matter to helpe him, but the condition made vpon the lease, and that hee may not plede, for that he hath no writing, and in so much that hee may not answere to the barre, he shalbe barred. And so in this case yee may see that a man is seised and he shall haue no assise. And yet if the lessee bee playntife, and the lessour defendant, hee shall barre the lessee by verdict of the assise. But in this case where the lessee is defendant, if he will not plede the said plee in barre. but pleade no wrong nor disseysin, the lessour shal recouer by assise &c. Causa qua supra.

¶ Also because such conditions be most commonly

monly put & specified in dedes endented, some title thyng shalbee said here to thee my sonne of indentures & of a deede pall conteyning condi-tions. And it is to weete þ if the indenture be bipertite or tripcite or quadripartite, al þ par-tes of the indenture be but one dede in the law, & euerie parte of the indenture is of lyke force of as great force & effect, as al the partes to-gether. And þ making of indentures is in two maners. One is to make thē in the third per-son, an other maner is to make thē in the first person. The making in the third þson, is as in such forme. This indēture made betweene A. of B. of the one part, & C. of D. of the other parte, witnesseth þ the foresaid A. of B. hath geuen & grāted, & by this present dede inden-ted, hath cōfirmed to the foresaid C. of D. such land, to haue &c. vpon þ condition &c. In wit-nes wherof the parties beforesaid interchāi-geably haue put to their seals, or els thus. In witnes wherof to þ one part of this indēture remaining wt the said C. of D. the foresaid A. of B. hath put to his seale, & to the other part of the said indēture remaining wt the said A. of B. the sayed C. of D. hath put to his seale geuen &c. Such indentures are called inden-tures made in the third person, for this þ the verbes be in the third person, & such forme of indenture is the more sure making, for þ it is more cōmonly vsed the making of indentures in the first person is in such forme.

¶ To all true christian people to whom this

ꝓsent writing indented shall come A. of B. greting in our lord euerlasting. Knowe ye me to haue geuen & graūted, & by this my ꝓsent deede indented to haue confirmed to C. of D. such land &c. Or els thus, Know all men that be ꝓsent, & them ꝑ be to come, ꝑ I A. of B. haue geue & graūted, & by this my ꝓsent dede indēted haue cōfirmed to C. of D. such land &c. to haue &c. vpon ꝑ condition followyng. In witnes whereof as well I the saide A. of B. as the foresaid C. of D. to thise indētures interchangeably haue put to our seales, or els thus. In witnes whereof, to one part of this indenture, I haue put to my seale, & to the other part of the same indenture the foresayde C. of D. hath put to his seale &c.

¶ And it semeth ꝑ such an indenture made in the first person, is as good in ꝑ lawe as the indenture made in the third person, whē both parties haue thereto put their seales, for in the indēture made in the third persō or in the first person, if mencion be made that the graūtour hath set his seale onely, and not the graūtee, then is the indenture onelie the deede of the graūtour. But where mencyon is made ꝑ the graūtee hath set his seale to the indēture &c. then is the indenture as wel the dede of the graūtour, as the deede of the graūtee, and thus it is the deede of both, & also euery part of the indenture is the deede of both parties in such case &c.

¶ Also if estate bee made by indēture to a man

man for terme of his lyfe, the remainder to an other in fee vppon condition &c. and if the tenaunt for terme of life hath let his lande to the partie of the indenture, and after dyeth, and he in the remainder &c. entreth by force of his remainder, in this case he is holden to performe all the condicions comprysed within the indenture as the tenant for terme of lyfe ought to do in his lyfe, and yet he in the remainder neuer sealed anie parte of the indenture, but the cause is, that in so much, that he entreth and agreeth to haue the land by force of the indenture hee is holden to performe the condition within the indenture if he will haue the land &c.

¶ Also if a feoffement be made by deede poll vppon condition &c. And for this that the condition is not performed, the feoffour entreth and happeth the possession of the deede poll, if the lessee bring an action of that entre againste the feoffour, it hath been questioned yf the lessour may plede the condition &c. by the deede poll against the feoffee, and some haue sayd nay, in so much that it seemeth vnto the that a deede poll, and the propertie of the same deede appertayneth to hym to whom the deede is made, and not to him that made the deede. And in so much that such a deede appertaineth not to the feoffour, it seemeth to them that he may not plede this deede &c. And other haue sayd the contrary, and haue shewed diuers causes. One is, if the case be such, in the action be-

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thynge them if the feoffee plede the same dede, & shew this to ỹ court. In this case ỹ is much ỹ the dede as ỹ the court the feoffor may shew to the court how in the dede be diuers conditions to be performed of the party of the feoffee, & for this ỹ they be not performed he entred &c. & therfor he shalbe receyued, by ỹ same reason when the feoffour hath the dede in hand & sheweth it to the court he shalbe wel receyued to plede ỹ this &c. And namely when the feoffour is party to the dede, for he ought to be party to the dede when he made the dede.

¶ Also if two men make an ỹ trespas to another, the which releaseth to one of them by his dede all actions personels &c. Notwithstanding he sueth an action of trespas against the other, the defendant may wel shew that the trespas was done by him & another his felowe, & that the plaintife by the dede that he sheweth hath releseth to his felowe all actions personals, & yet such dede appertayneth to his felow & not vnto him, but for this that he may haue aduãtage by the dede, if he will shew the dede to the court, he may wel plede &c. Therefore by the same reason in the other case whe ỹ feoffor ought to haue aduãtage by the cõditiõ cõprised in the dede poll.

¶ Also if the feoffee graunt or graunted the dede poll to the feoffour, such graunt shulde good, and then the dede & the property of the dede appertayneth to the feoffour. And when the feoffour hath the dede in hand, and plea-

deth it to the court, it shalbe the more vnderstand y^t he came to the dede by a lawfull meane then by a torcious meane, & so it semeth y^t they may well plede such a dede good, y^t comprehendeth condition &c. if he haue the dede in hand &c. Ideo semper quere de dubijs, quia per rationem puenitur ad legittimam rationem.

¶ Estates that men haue vpon condition in the lawe be such estates that haue a condition in the lawe annexed to them, though it be not specyfied in wrytinge, so as a man graunt by his dede to another the office of a Parkershippe of a Parke, to haue and to occupie the same office for terme of his life, the estate that hee hath in the office, is vpon condition in the lawe, that is to say, that the Parker well and truelie shall keepe the parke, and do thys that to hys office appertayneth to doe, or otherwyse that it shall bee lawfull to the grauntour and to his heires to put hym out, and to graunt that to another if hee will &c. And such condition as is vnderstand by the lawe to be annexed to some thing, is as strong as if the condition were set or put in wryting. In the same maner it is of grauntes of offices of stewardes, constables, bedels, bailiffes, and other officers. But if such office bee graunted to a man to haue and to occupie by him or by his deputie, then if the office bee occupyed by him or by his deputy as it ought by the lawe to bee occupyed, this suffiseth for hym, or els the grauntour or his heires may put him out,

as is aforesaid.

¶ Also estates of lands or tenements may be vpon condition in the law, though the vpō the estate made, there was no verbal made of the cōditiō. As put the case a lease bee made to the husband & his wife, to haue & to hold to them during the couerture betweene them, in this case they haue estate for time of their two liues vpō cōditiō in the law, that is to say, if one of thē die, or if diuorce be made betweene thē, that then it shall be lawful to the lessor & his heires to enter &c. & they haue estate for terme of their two liues it is proued this. Euery man that hath estate or franktenemēt in any lands or tenements, either he hath estate in fee, or in fee taile, or for terme of life, or for time of anothers life, & yet by such lease they haue franktenemēt. But they haue not by that grāt, fee nor taile, nor for terme of anothers life. Ergo they haue estate for terme of their two liues, but this is vpon condition in the law in forme aforesaid. And in this case if they make wast, the lessor shal haue against them a writ of wast, supposing by his writ. Quod tenent ad terminū vitæ &c. but in his plee he shall declare how & in what maner the lease was made. In the same maner it is if an Abbot make a lease to a mā, to haue & to hold during the time that the lessor is Abbot. In this case the lessee hath estate for terme of his owne life, but this is vpon condition in law, that is to say, that if the Abbot die, or resigne, or be deposed, it shall be lawfull

to his ſucceſſours to enter &c. Alſo a like matter ſee in the booke of aſſiſes. An. 38. E. 3. a plee of aſſiſe in this forme that enſueth. Aſſiſe of Nouel diſſeyſin was ſometime brought agaynſt one A. ẏ pleded to the aſſiſe, & was found by verdit ẏ the aunceſter of ẏ pleyntife deuiſed the tenemẽtes to be ſold by the defendant that was his executor to make diſtributiõ of the money for his ſoule, & it was foũd ẏ a man after the death of ẏ teſtator tẽdered him a certain ſūme of mony for the tenemẽts but not to the value, and ẏ the executour after held the tenementes in his owne hand by two yere to the intent to haue ſolde the tenements more deerer to ſome other, and it was founde that hee had all the whyle after taken the profites of the tenementes to his owne vſe, wythout anie thing doyng for the ſoule of the dead. *Mowbray*, the executour in ſuch caſe is holden by the lawe to make the ſale as ſoone as hee may after the death of the teſtatour and it is found that hee refuſed to make the ſale & ſo the default was in him, and alſo by force of the deuiſe hee was holden to haue put all the profites of the ſaid tenements to the vſe of the dead, & it is foũd that he hath taken them to his owne vſe and ſo another default is in him, wherefore it was adiudged that the pleintiff ſhould recouer &c. And ſo it appeareth by the ſaid iugement that by force of the ſaide deuiſe the executour had none eſtate nor power in the tenementes but vpon condition in the law &c. And in ſuch ca-

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ses it nedeth not to haue shewed any deed reherfinge the conditions &c. Ex paucis dictis intendere plurima possis. More shalbee sayde of conditions in the Chapiter of Discents that take away entre, & in the chapiter of Releases, & in the chapiter of Discontinuance.

¶ Discentes.

DIscentes that take away entres be in two maners, that is to sey, where the dyscent is in fee or in fee taile. Discent in fee that taketh away entre is if a man seysed of certain lands or tenementes is disseysed, and the disseysour hath issue & dyeth of such estate seised: Nowe the tenementes discende to the issue of the disseisour by course of the lawe as heire vnto him. ¶ And for this that the lawe putteth the lādes or tenementes vpon the issue, & the issue commeth to the tenementes by course of the lawe and not by his owne dede, the entre of ÿ dysseisee is taken away, and is therof put to his writ of entre vpon disseisin against the heire of the disseisour to recouer the lande.

¶ Dyscent in the tayle that taketh away entre is, if a man be disseised, and the disseisor gyueth the same lande to another in the tayle, and the tenaunt in the tayle hath yssue and dieth seised of such estate, and the issue entreth, in this case the entre of the disseise is taken away, and hee is put to sue agaynst the issue of the tenant in the tayle a writ of Entre vpon

pon disseisin &c.

¶ And note well that in such discentes that take away entrees, it behoueth that a man dye seysed in his demesne as in fee taile, for dyinge seysed for terme of life or for terme of anothers life, shal neuer take away the entre &c.

¶ Also a discent of reuersion or of remainder shal neuer take away entre &c. so yᵗ in such cases that take away entres by force of discēts, it behoueth that hee that dyeth seysed haue fee or franketenement at the time of his dyinge, or els such discent taketh not away entre.

¶ Also as it is said of discēts yᵗ descend to yͤ issue of him that dieth seised &c. the same law is where the hath no issue, but yͤ tenements descend to yͤ brother, or to the sister, or to the uncle, or to some other cosin of him yᵗ dieth seised &c.

¶ Also if there be Lord and tenāt and the tenant be disseised, & the disseisour alieneth to an other in fee, & the alienee dieth without heire, & the Lord entreth as in his escheate: In this case the disseisee may enter vpon the Lorde, for this that the Lord commeth not to the lād by discent, but by escheate.

¶ Also if a man seised of certain lande in fee, or in fee taile vpon condition to yelde certaine rent, or vpō other cōditiō, though that such tenant seised in fee or in fee tayle dye seysed, yet if yͤ condition be broken in their life, or after their decease &c. this taketh not away the entre of yͤ feoffour, nor of the donor, or of their heires, for this that the tenancy is charged with the condition

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dition, and the estate of the tenancy is conditionel in whose handes so euer the tenancy shall come &c.

¶ Also if such a tenant vpon condicio be disseised, & the disseisor dye therof seised, & ỹ land discendeth to ỹ heire of ỹ disseisor, now the entre of ỹ tenant vpon condition & was disseised, is taken away, but if the condition bee broken &c. then may the feoffor, or ỹ donor, ỹ made the estate or their heires enter &c. causa qua supra.

¶ Also if a disseisor dy seised, & his heires enter &c. the which endowerth the wife of the disseisor of the third part of the tenements, in this case as to the third that is assigned to the wife in dower, in continent anon after that the wife entreth & hath possession of the sae third part, the disseisee may lawfully enter vpon the possession of his wife in the same third part. And the cause is for this, that when the wife hath her dower, she shall be iudged rather immediately by her husbande & not by the heire, & so as to ỹ franktenement of the sae third part, the discent is defeated, & so ye may see how before the endowement the disseisee might not enter in any part &c. & after the endowement he may enter vpon the wife, & yet hee may not enter vpō the other two parties that the heire of the disseisour hath by discent &c.

¶ Also if a woman bee seised of lande in fee, whereof I haue right and title to entre, if the woman take an husbande and haue issue bee-twene them, and after the wyfe dyeth seised.

and after that the husband dieth, & the illue entreth &c. in this case I may enter upon ꝑ poſſeſſion of the illue, for thus that the illue commeth not to ꝑ tenements immediately by diſcent after the death of his mother.

¶ Alſo if a villeine entende his father, & the father entreth & dyeth of such estate leyſed by which the tenements diſcend to the villeine, as to the ſonne & heire &c. In this case ꝑ diſſeiſee may well enter upon the villeine, notwithſtanding the villein, for this that as to ꝑ villein, the villeinage is abrogen & but as the villeinage, notwithſtanding ꝑ diſcent.

¶ Alſo if a man leyſed of certaine landes in his demeane as of fee, hath illue two ſonnes and dyeth, and the yonger ſonne entreth by abatement in the lande the which hath illue, & of this dyeth leyſed and the tenementes diſcende to the illue, and the illue entereth into ꝑ land, in this case the elder ſonne or his heires may enter by the lawe upon the illue of the yonger ſonne, notwithſtandinge the diſcent, for this, that when the yonger ſonne abated in the lande after the death of his father before any entre of the elder, the lawe intendeth that hee entreth in clayminge as heire unto his father, and for this that the elder brother claymeth by the ſame tytle, that is to ſay, as heire unto his father, hee and his heires may enter upon the illue of the yonger brother notwithſtanding the diſcent &c. for this that they clayme by one ſelfe tytle. And in the ſame ma-

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ner it shalbe if there be many discents frō one
ille to another ille of ꝑ yonger sonne &c. But
in such case if a father were seised of certeine
lāds in fee, & hath issue 2 sonnes & dyeth, & ꝑ elder
sonne entreth & is seised &c. And after the yon-
ger brother disseyseth him, by which disseisin
he is seysed of fee, and hath issue, and of such
estate dyeth seysed, then the elder brother may
not enter, but is put to his writ of entre vpon
disseisin for to recouer the land. And the cause
is for this, that the ponger brother commeth
to the tenements by a wronge disseisin made
vnto his elder brother. And for that wronge
ꝑ law may not entend ꝑ he claimeth as heire
to his father no more then a straunge person
that had disseised the elder brother that neuer
had any title &c. And so may ye see the diuer-
sitie where the younger brother entreth after
the death of his father, before any entry made
by ꝑ elder brother in such case &c. And where
the elder brother entreth after the death of his
father, and is disseised by the younger brother
&c. In the same maner if a man seysed of cer-
taine lande in fee, hath issue two daughters,
& dyeth, & the elder daughter entreth in ꝑ land,
claiming all the land to her, and thereof vncly
taketh the profites, and hath issue and dyeth
seysed, by which her issue entreth, which issue
hath issue and dyeth seysed, and the second is-
sue entreth &c. et sic vltra. Yet the younger
daughter and her issue as to the halfe may
enter vppon euery issue of the elder daughter,

not

notwithſtãding ſuch diſcent, for thꝛis that they claime by one ſeiſe title &c. But in ſuch caſe if both ſiſters come into the hand to enter after the death of their father, & therof were ſeiſed, and after the elder ſiſter therof diſſeiſed the ponger ſiſter of that, ꝓ to her belongeth, & therof is ſeiſed in fee, & hath iſſue, & of ſuch eſtate dieth ſeiſed, by which the tenements diſcend to the iſſue of the elder ſiſter, then the yõger ſiſter or her heirs may not enter &c. cauſa qua ſupra.

Alſo if a man ſeiſed of certeine lande hath iſſue two ſonnes and the elder brother is baſtarde, and the ponger brother mulier, and the father dyeth, and the baſtard entreth and claymeth as heire vnto his father, and occuppeth the lande al his life without any entre made vpon him by the mulier, and the baſtarde hath iſſue and dyeth of ſuch eſtate ſeiſed in fee, and the lande diſcendeth to his iſſue, and his iſſue entreth &c. in this caſe the mulier is without remedy, for he may not enter, nor he ſhal haue no action for to recouer the lande, for this that thꝛis an auncient leawe in ſuch caſe vſed, but it hath bene an opinion of ſome men that that ſhalbe vnderſtand where ꝓ father hath a ſone a baſtard by a woman, and after he wedeth the ſame woman, and after the eſpouſaile her hath iſſue by ꝓ ſãe woman a ſonne or a daughter mulier, & the father dieth &c. If ſuch a baſtarde enter &c. and hath iſſue, and dyeth ſeiſed &c. Then ſhall the iſſue of ſuch a baſtarde

haue

haue the land cleerly to him as it is aforeſaid &c. And not any other baſtard borne of the mother that was not eſpouſed to his father, and this is a good & reaſonable opinion. For ſuch a baſtard borne before the eſpouſels ſolempnized betweene his father & his mother by the lawe of holy Church is mulier, though that by the lawe of the land he is a baſtarde borne, and ſo he hath colour of entre as heire to his father, for this that he is by one lawe mulier, that is to ſay, by the lawe of holy Church. But otherwiſe it is of a baſtard that hath no maner of colour to enter as heire, in ſo much that hee may not in no caſe be ſaid mulier &c. for ſuch a baſtarde is ſayd Quaſi nullius filius. But in ſuch caſe aforeſaid where the baſtarde entreth after the death of his father, and the mulier putteth him out, & after the baſtard diſſeiſeth the mulier, & hath iſſue, and dieth ſeiſed, & the iſſue entreth, then the mulier may haue a writ of Entre upon diſſeiſin againſt the iſſue of the baſtard, & recouer the lande &c. And ſo may ye ſee the diuerſitie where ſuch a baſtard continueth his poſſeſſion al his life without any interruption, and where the mulyer entreth & interrupted the poſſeſſion of ſuch a baſtard.

¶ A child within age haue title & cauſe to enter into any lands or tenements vpon an other by is ſeyſed in fee or in fee taile of the ſame lands or tenements, if ſuch a man by is ſo ſeiſed by

of

of such estate, so seysed and the tenements discend to his issue during the tyme that the child is within age, such discent shal not toll the entre of the childe. but he may enter vpon the issue that is in by discent &c. for this that no laches shalbe adiudged in a childe within age in such case &c.

¶ Also if the husband & his wife, as in right of the wife haue title and right to enter in the tenements that another hath in fee, or in fee taple, & such a tenaunt dieth seised &c. In such case ỳ entre of the husbād is taken away vpō ỳ heire that is in by discent. But if the husbād die, thē the wife may well enter vpon the issue by discent, for this that the lachys of the husbands shal not tyrne to the wife & to her heire in preiudice nor in damage in such case but ỳ ỳ wife & her heirs may well enter where such discent is duringe the coverture &c.

¶ Also if a man that is not of wholé minde, that is to say in latin. Mal non est compos mētis, hath cause to enter in any such tenements if such discēt or supra be had in his life during the tyme that he was out of his mind, & after die, his heires may well enter vpon him that is in by discēt. And in this may ye see a cause ỳ the heire may enter, & yet his auncestor that had the same title may not enter for ỳ he was out of his minde at the tyme of such discent, if he wil enter after such a discent, if actiō vpō this be sued against him he hath nothing for him to plede, or to helpe him, but say ỳ he was

out

out of mind at ꝯ time of such discēt &c. And he shall not be receyued to say this, for this ꝯ no mā of ful age shalbe receyued in any plē by the lawe to disalle or disable his owen plō. But the heire may wel disable the person of his ancestor for aduantage of the heire in such case, for this ꝯ no laches may be adiudged by the lawe in him ꝯ hath no discretiō in such case. And if such a man out of his minde make a feoffemēt &c. he may not enter ne haue a writ called Dū non fuit cōpos mētis &c. Cause qua supra. But after his death, his heire may wel ēter or haue the same writ, Dū non fuit compos mētis at his election &c.

Also if I be disseised by a child within age ꝯ alieneth to another in fee, & ꝯ alienee dieth seised, & the tenements discend to his heire, the child being within age, mine entre is takē away. But if the child within age enter vpō ꝯ heire ꝯ is in by discēt as he wel may, for this ꝯ the discent fouas during his nonage, then I may wel enter vpon the disseisee, for this ꝯ by his entre he hath defeated & annulled the discēt. And in the same maner it is where I am disseised, and the disseisour maketh a feoffement in fee vpon condition &c. And the feoffee dyeth of such estate seyled &c. I may not enter vpon the heire of the feoffee. But if the condition be broken so that by such cause the feoffour entreth vpon the heire, now may I well enter, for this that when the feoffour or his heires enter for the condition broken, the discent is

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¶ Also if I be disseysed, and the disseisour hath issue and entreth into religion, by force of which the landes discend to his issue, in this case I may well entre vpon the issue, and yet there was a discent. But for this that such discent commeth to the issue by the fathers deede, that is to say, for this that hee entred into religion &c. the discent commeth to him by the deede of God, that is to say, by death & mine entre is congeable, and lawful, for yf I arreine an assise of Nouel disseisin against my disseisour, though that he after enter into religiō, this shal not abate my writ. But my writ this notwithstanding shal abide in his force and strength, & my recouery against him shal be good, by the same reason ỹ discent that came to his issue by his owne deede may not put me fro mine entre &c.

¶ Also if I let to a man certaine landes for terme of twenty yeares, and another disseiseth me, and putteth out the termor, and dyeth seised, and the tenements discend vpon his heire. I may not enter, and yet the lesse for terme of yeares may wel enter, for this that by his entre hee putteth not out the heire that is in by discent frō ỹ franketenemēt ỹ vnto hō discended, but onely claimeth to haue ỹ tenements for terme of yeres, the which is no expulsyng of the frankeletenement of the heire, that is in by discent. But otherwise it is where my tenaunt for terme of lyfe is disseised &c. Mais

quar

¶ It is to be said, that a man may be seised of tenements in fee by occupation in time of warre, & dyeth thereof seised in time of warre, & the tenements descend to his heire, such discent putteth out no man of his entre. And of this a man may lese a plee in a writ of Ayel. An. 7. E. 2.

¶ Also, no dying seised (where al the tenements come to another by succession) shal take away the entre of any person &c. As of Prelates, Abbots, Priors, Deanes or Persons of churches &c. though that there were no successors: this putteth no man from his entre &c. Which shalbe said of discents in the Chapiter of Continual claime &c.

¶ Continual clayme.

¶ Continuall clayme is, where a man hath tyght and title to enter in any landes or tenements whereof another is seised in fee, or in fee taile. If he that hath tyght to entre make continual claime to the landes and tenements before the dying seised of him, that holdeth the tenements. Then though such a tenãt die thereof seised, and the lands & tenemẽts discend to his heire, yet may he that hath made such claime or his heires enter into the landes and tenements discended, because of the continuall clayme made, notwithstandyng such discent. As in case a man be disseised, & the disseisy maketh continual claime to the tenements

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in the lyfe of the disseisour though the disseisour die seysed in fee, & the land discendeth vnto his heires, yet may the disseisee enter vpon the possession of the heire, notwithstanding such discent.

¶ In the same maner it is, if tenãt for terme of life alien in fee, he in the reuersion, or hee in the remãinder may enter vpõ ẽ alienee. And if such alienee dy seised of such estate without continual claime made to the tenements before the dying seysed of the alienee, & the reuersion becawse of the dying seysed of the alienee discend vnto the heire of the alienee, then may not he in the reuersiõ, nor he in ẽ remainder entre. But if he in the reuersion, or he in the remainder ẽ hath cause to enter vpon the alienee made cõtinual claime to the tenements before the dying seysed of the alienee, then such a man may enter after ẽ death of the alienee as well as he might in his life.

¶ Also if lands be let vnto a man for terme of his lyfe, the remaynder vnto another for terme of life, the remaynder vnto the thirde in fee, if the tenant for terme of life alien to another in fee, and hee in the remainder for terme of life maketh continual claime vnto the land before the dying seysed of the alienee, & after the alienee dieth &c. and after he in the remaynder for terme of lyfe dyeth before anie entre made by him.

¶ In this case hee in the remainder in fee may enter vpon the heire of the alienee, because

cause of cõtinual claime made by him ỹ made the remainder for terme of lyfe, for this ỹ such right that he hath to ẽter, shal go & remain to him in the remainder after him, in so much ỹ he in the remainder in fee may not ẽter vpõ ỹ alyene in fee during ỹ life of hi in the remaynder for terme of life, and because he might not make cõtinual claime, for none may make cõtinual claime but when hee had title to enter: But it is to see to thee my child how, and in what man such cõtinual claime shalbe made, & to lern this, three thigs there be to vnderstãd.

¶ The first thing is, if a man haue cause to enter in any lands or tenemẽts in diuers townes within one shire, if he enter in any parcel of the lands or tenemẽts that ber in one towne in the name of the lands or tenemẽtz that be in one town to which he hath right to ẽter vpon all the townes in the same shire, by such entre he hath as good possession & seisin of such lãds or tenements whereof he hath title to enter as if he had ẽtred into euery parcel, & this semeth great reasõ, for if a man will enfeoffe another vpon dede, of certein lãds or tenemẽts that he hath in many townes within one shire, and he will deliuer seisin to the feoffee of parcell of the tenements within one towne in the name of al the lands & tenementes that hee hath in the same towne, & in all the other townes &c. all the said tenementes &c. shall passe by force of the sayd liuerie of seysin to hym to whom such feffement in such maner is made. And yet

he to whom such liuery of seysin is made, hath no right to all the lands & tenements in al the townes, but because of ỹ liuery of seisin made of parcel of the lands or tenemẽts in one towne: A mutro fortiori. It semeth good reaso ỹ whe a man hath title to enter into lãds or tenemẽts in diuers townes within shire before any entrie by him made, ỹ by the enter of him made in pcel of the tenemẽts in one towne in ỹ name of al ỹ lãds & tenemẽts to the which he hath title to enter within the same shire, this is a seysin of al in him, & by such ẽtre he hath possessiõ & seisin in deede, as if he had ẽtred into eũy pcel &c.

¶ The second is to vnderstand, ỹ if a man hath title to enter into any lãds or tenemẽts, if he dare not enter into the same lands or tenemẽts, nor in any parcell thereof for doubt of beating, or for doubt of maiming, or for doubt of both, if he go & approche as nigh ỹ tenemẽts as he dare for such doubt, & claime by wordes the tenements to bee his, incontinent by such claime he hath a possession & seisin in the tenementes as well as if hee had entred in deede, though he had neuer possession or seisin of the same lands or tenemẽts before the said claime. And that the law is such, it is wel proued by a plee of an Assise in the booke of Assises An. 38. E. 3. The tenure of which ensueth in this fourme.

¶ In the county of Dorset before the same Iustices it was founden by verdict of Assise, that the playntife which had right by discend of hee

of herytage, to haue the tenemēts put in plaint at the time of the death of his auncestor whych was dwelling in the towne where ỹ tenemēts were, & by word clameth the tenementes a-mōg his neighbors, but for doubt of death hee durst not approche vnto the tenemēts, but lāgeth an assise, & vpon the matter found, it was awarded that he should recouer.

¶ The third thyng is to vnderstand in what time the claime ỹ is said continual claim thal serue & help hī ỹ maketh ỹ claime & his heire. And as to this it is to weete ỹ he ỹ hath title to enter when he will make his claime, & if he dare approche vnto ỹ lād, this it behoueth him to go vnto the land, or to peel of it, & make his claim. And if he dare not approch vnto the lād for dread of beating, maiming, or death, then it behoueth him to go, & to approche as nigh as he dare toward the lād or peel thereof, & make his claime. And if his aduersarie ỹ occuppeth the land die seysed in fee, or in fee tale within a yeare and a day after such clayme made, by which the tenementes discend vnto his sonne as heire vnto him, yet may hee that made the clayme enter vpon the possession of the heirez. But in this case after the yeare and the day that such clayme was made, if none other claime be made, if the father then die seised, ỹ morow after the yere & the day, or at another day after &c. then may not hee that made the clayme enter. And therefore if hee that made the claime will be sure alway that hys entre

that not be taken away by such discēt, it behoueth hī ꝑ within the yere & the day after ꝑ first claime to make another claime in the forme aforesaid. And within the yere & the day after ꝑ second claime, to make the third claime in the like maner, & within the yere & the day after ꝑ third claim, to make another claime &c. that is to say, to make another claime within euerie yere & day next after euery claime made during the life of his aduersary, & then at what time ꝑ his aduersary die, his entre shall not be take away by no discent. And such claime made in thys maner is most cōmonly taken & called continual claim of hī that made the clayme. But yet in case aforesaid where his aduersary dyeth within the yere & the day next after ꝑ first claime, this is in the lawe a continual claime, in so much ꝑ his aduersary died within ꝑ yere & ꝑ day after the same claim, for it is no neede for hī that made the claime to make any other claim, but at that time that he within the like yere & the day &c.

¶ Also if his aduersary be disseised within ꝑ yeare & day after the clayme, & the disseisour dieth therof seised within ꝑ yere & the day &c. This dying seised shall not hurt him ꝑ made claime, but that he may enter &c. For who soeuer he be that dieth seised within the yeare & the day after such clayme, that shall not hurt him that made the claime, but that he may enter though there were many dyings seised & many disseisins within the yere & the day &c.

¶ Also

¶ Also if a man be disseised, & the disseisor dy seysed within the yere & the day next after the disseisin done, whereby the tenementes discend to his heire, in this case the entre of ẏ disseisee is taken away, for the yere & the day ẏ should helpe ẏ disseisee in such case &c. shal not be taken fro ẏ tyme of the title of entre growen vn to him, but only frō ẏ tyme of ẏ claime by him made ẏ tyme aforesaid, & for that cause it is good for such a disseisee for to make his claime &c. in as shorte tyme as he may after ẏ dis. &c.

¶ Also if such a disseisour occupye the lande by x. yeres without any claime made by the disseisee &c. & the disseisee by litle space before ẏ death of the disseisour make claime in & for the aforesaide, if so it fortune that within a yere and a day after such claime the disseisour dieth seised &c. the entre of the disseisee is congeable, and for this it shal be good for such a man that made no claime that hath title to entre &c. when he heareth that his adversary lyeth sicke to make his claime &c.

¶ Also as it is sayd in the cases put, before where a man hath title to entre because of ẏ disseisin &c. The same lawe is where a manne hath right to entre because of the title &c.

¶ Also in the said precedentes may ye knowe ye shall se two thinges. One is where a man hath title to entre vpon a tenant in taile, if he make any such claime vnto the land &c. Then is the state of the taile defeated, for that claime is as an ētre made by him & is of the same ef-

sed in the lawe as if he were upon the same tenementes, and had entred in the same tenementes as is aforesayd. And then when the tenant in taile immediatly after such clayme continueth his occupation in the tenementes, this is a disseisin made of the same tenementes unto him that made the claime. Et sic per consequens the same then hath fee simple &c.

¶ The second thing is, y as oft as he that hath right to enter maketh such claime, & this notwithstanding his adversary continueth his occupation &c. so oft y adversary doth wrong & disseisin to him that made the claime. Wherfore this so oft may he that made the same claime for every such wrong and disseisin made unto him, have a writ of trespas Quare clausum suum fregit &c. to recover his dammages &c. Or els may have a writ upon the statute of king Richard the second made the 5 yere of his raigne supposing by his writ that his adversary hath entred into the landes or tenementes of him that made y claime where his entre was not geven by the lawe &c. & by such action he shal recover his dammages &c. And if the case be such that the adversary occupy the tenementes with force & armes, or with a multitude of people at the time of such claime &c. Then may he that made the claime for every such time have a writ of Forcible entre & recover his treble dammages.

¶ Also here it is to see if the servant of a man that hath title of entre may by the commaundement of his maister make continuall clayme

for his master in his name, & it seemeth that in some cases he may do this, for if he by his commaundmēt come to any parcel of ỹ land, & there maketh claime &c. in the name of his master, this claime is good for his master, for this that he hath done is that it behoueth his master to do in such case &c.

Also if a master say vnto his seruant ỹ hee dare not go into the land nor into any parcel of the lande for to make his claime &c. & dare not approch more nigh vnto the same land save to such a place called Dale, & commaundeth hys seruāt to go to the same place of Dale, & there to make a claime for him &c. if the seruant doe &c. this seemeth as good claime for his master as if he had bene there in his owne person, for ỹ the seruant did al ỹ his master durst do any ought to do by the lawe in such case.

Also if a man be so sicke or so lame that he may not in no maner come to the land, nor to any parcell of the same, or if there bee a rectule that he may not because of his order go out of his house &c. if such a man of person cōmaūd his seruant to goe and make clayme for hym &c. and the seruaunt dare not goe to the lande, nor to any parcel therof for doubt of beating, mayme or death, and for that cause such seruant commeth as nigh to the lande as he dare for such dreade, and maketh his clayme &c. for his master, it seemeth that such clayme for his master is good and strong in lawe. for else his master should be in two great mischief, for

it may well be that such a person ꝑ is sicke or laine, or recluse, cannot finde any seruant that dare go vnto the land nor to any parcel of it to make the claime for him &c. But if the master of such a seruant be in good health & may and dare well go to the tenements or to parcel of it to make his claime for him & if such a master commaund his seruant to go to some parcel of the land & make claime for him &c. Now whil the seruant is in going to do the commaundement of his master, he heareth by the way such things that he dare not go to any parcel of the laude for to make any claime for his master, & for that cause he goeth as nigh vnto the laude as he dare for doubt of death, & there he maketh claime for his master in ꝑ name of his master &c. It semeth that the doubt in ꝑ law in such case shalbe if such claim auaileth to his master or not, for this ꝑ the seruaut did not all that his master at the time of commaundement dare to haue done.

¶ Also some haue said that where a man is in prison & is disseised, and the disseisour dieth seysed during the time that the disseise is in prison, by which tenements discend to ꝑ heire of the disseisour, they haue said that this shall not hurt the disseised that is in prison. but that he may well enter notwithstanding such discent for this that he may not make continual claime when he was in prison. And also if such a one that is in prison bee vouched in an action of Dett or Trespas, or in appele of roberye &c.

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he shal reuerse such outlawry by writ of Error &c. because he was in prison at the time of outlawry against him pronounced.

¶ Also if a recouery be had by discent against such a one ꝑ is in prison, he shal auoide ꝑ iugement by a writ of Errour, for this ꝑ he was in prison at the time of such default made &c. And because ꝑ such matters of record shal not hurt them ꝑ be in prison, but ꝑ it shalbe reuersed &c. A multo fortiori. It seemeth ꝑ a matter in deede, ꝑ is to say, such discent had when he was in prison, shal not hurt him especially for this that he may not go out of prison to make continuell claime &c.

¶ And in the same maner it seemeth to them where a man is out of ꝑ realme in ꝑ kings seruices for battles of the realme, ꝑ a man be disseised when he is in the seruice of the king, that such discent shal not hurt him because for this ꝑ he might not make continual claime &c. it seemeth vnto them that hath he commeth again into England he may enter again vpon the heire of ꝑ disseisour &c. For when a man shal reuerse an outlawry ꝑ is pronounced against him but onely the time that he is in seruice &c. Ergo a multo fortiore &c. that hath auoyded by the law in the other case &c.

¶ Also other hath said that if a man be out of the realme though he be not in the kings seruice, if such a man being out of the realme be disseysed of landes or tenementes within the realme, ꝑ the disseisour dye seised &c. the dysseisee

seisee beinge out of the realme, it semeth unto them that when the disseisee cometh into the realme, that he may well enter upon the heire of the disseisour &c. & this semeth unto thē for two causes.

¶ One is, ẏ he that is out of the realme, may not have knowledge of ẏ disseisin made unto him by understanding of the law, no more thē that a thing done out of the realme may be tried within the same realme by ẏ oth of xij. mē &c. & cōpel such a man to make cōtinual claime which by the understādyng of ẏ law can have no knowledge or cognisance of such disseysin made or done this shalbe incōvenient, namely, when such a disseisin is done unto him, when he was out of the realme. Also ẏ dying seised was done whā he was out of the realme, for in such case he may not by possibility after the cōmon presumption make no cōtinual claime, but otherwise it shalbe of the disseisee, where he is in ẏ realme at ẏ time of the disseisin, or at ẏ time of the dyinge seised of the disseisor &c. Another matter they alleged for a prose, that when the statute of kinge Edward the third, the [illegible] yere of his raigne, by which statute no claime is ousted, ẏ law was such, that if a fine were levied of certein landes or tenementes, if any that was a strāger to the fine had right to have the sāe lands or tenementes, if he came not & made his claime therof within a yere and a day next after the fine levied, he shalbe barred for ever. Quia dicebatur finis

quod

the land discendeth unto his heires, and after that an Abbot is chosen, and made Abbot of the monastery, a questiō is if the Abbot may enter upon the heire or not, And it semeth it is longe that the Abbot may wel enter in this case for this that the Covent in time of vacation was no person able to make cōtinual claime, for no more then they be personable to sue an action, no more be they personable to make continuall claime, for the Covent is but a dead body without hed, for in time of vacation a graūt made unto them is voyde, & in this case an Abbot may not have a writ of Entrie upon disseisin against the heire, for this that he was never disseised. And if the Abbot may not enter in this case, thē he shall be put unto his writ of right the which shalbe to harde for the house, by which it semeth to them that the Abbot may wel enter &c. Quaere de dubiis, legem bene discere si vis, quaerere dum sapere que sunt legitima vere.

Releases.

RELEASES be in divers maners, that is to say release of right that a man hath in landes or tenementes, and release of actions realles & personels and of other thinges. Release of all the right that a man hath in landes or tenementes &c. is commonly made in such fourme, or to such effect. Noverint universi per presentes me A. de B. remisisse, relaxasse, & omnino de me & heredibus meis quietum clamasse C. de D. totum ius, statum, & clameum, que habui, habeo, vel quovismodo in futuro habere potero,

de E

de & in vno mesuagio cum pertin in F.

And it is to be understand, that these wordes (remisisse & quiet clamasse) be of such effect as these wordes, relaxasse &c. & also these wordes which be comonly put in such dedes of releases &c. ÿ is to understand. Que quovismodo in futuru habere potero, be as wordes voyd in the law, for no right passeth by a release, but ÿ right ÿ the releasour hath at the time of his release made, for if to be father & sonne, & the father bee disseised, & the sonne living, his father releaseth by his dede to the disseisor al ÿ right ÿ he hath or may haue in the same tenementes wout clause of warrantise &c. & after ÿ father dyeth, the sonne may lawfully enter upon the possession of the disseisour, for this that hee had no right in the land living his father, but the right discended unto him by discent after the release made by the death of his father. Also in a release of al the right that a mā hath in certaine lands, it behoueth unto him to whō the release is made in such case that he hath a freehold in the lands in dede or in the lawe at the time of ÿ release made, for in euery case where hee to whom the release is made, hath a freeholde in dede or in law at the time of the release made &c. the release is good. Franktenemēt in law is, as if a man haue disseised another, & thereof dyeth seysed, by the which the tenemēts discend unto his sonne, howbeit that hys sonne enter not in the tenements, yet hee hath a franktenement in the law which by force of

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the diſceyt is cast vpon him, & therfore the re-
leaſe made is good ynough. And if hee take a
wife ſo beig ſeiſed i the law, howbeit ꝑ he ne-
uer entred in deede & dierly, yet his wife ſhall haue
the yſe her dower: And in ſuch caſe of releas of
al her right, howbeit ꝑ he to whō the releaſe
is made ne hath any thing in the frāktenemēt
neither in deede nor in law, yet ꝑ releaſe is y-
nough, as if ꝑ diſſeiſor haue left īnd ꝑ hee had
by diſſeiſin to another for terme of his life, ha-
uing the reuerſiō to hī, if ꝑ diſſeiſ or his heirs
releaſe vnto ꝑ diſſeiſor al the right &c. that re-
leaſe is good, for thus that hee to whō ꝑ releaſe
is made, had in him a reuerſiō at ꝑ time of the
releaſe made. In the ſame maner if a leaſe bee
made to a man for terme of life, the remainder
vnto another for terme of life, the remaynder
vnto the third in taile, the remainder vnto the
fourth in fee, if a ſtraūger ꝑ hath the right in
to the land releaſe al his right vnto any of thē
in the remainder, ſuch releaſe is good, for thys
ꝑ euery of thē hath a remainder veſted in him
ſelfe, yet if the tenant for terme of lyfe be dyſ-
ſeiſed, & after he that hath right (the poſſeſſion
being in the diſſeiſour) releaſe vnto one of thē
to whom the remaynder was made, all hys
right &c. That releaſe is voide, for that, that
he nr had in him no remainder in deede, but
all onely a right of a remaynder at the tyme
of ꝑ releaſe made. And note, that euery releaſe
made to him that hath a reuerſion or remayn-
der in deede, ſhal ſeruir & helpe them that haue

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the franketenement as well as them to whom the releale is made if the tenāt haue ꝑ releale in his hand ꝛc. In the ſame maner a releale made to a tenant for terme of life, or to a tenāt in the taile, ſhal enure vnto them in the reuerſion or to them in the remaindor, as well as to the tenant of franketenement, and ſhall haue a great aduātage of that, if that they may ſhew it. And if there be lord & tenāt, & the tenant is diſſeiſed, & the diſſeiſy releaſeth vnto ꝑ diſſeiſor al the right ꝑ he hath in the ſeignory, or in the land, the releale is good, & the ſeignorie is extinct. And if the goods of ꝑ diſſeiſy bee taken, and of them the diſſeiſy ſueth a Replegiare agaīſt the lord, he ſhall compell the lord to anſwer vnto him, & if he wil anſwer vpō the diſſeiſour, then vpō the matter ſhewed, ꝑ anſwerie ſhalbe abated, for the diſſeiſy is tenaunt to them in right & in lawe.

¶ Alſo if land bē geuen to a man in the taile reſerring vnto the donour & his heires a certeine rent, if the donee be diſſeiſed, & after the donour releaſeth to the donee al the right that he hath in the lād, and after the donee entreth into the land vpon the diſſeiſour, in this caſe the rēt is gone, for thus that the diſſeiſy at the tyme of the releaſe made was tenant in right, and in lawe vnto the donour, and the anſwerie of fine force ought to bee made vppon him by the donour for the rent behynde ꝛc. But yet nothing of the right of the land, ꝑ is to ſay, of the reuerſion, ſhall paſſe by ſuch releaſe

leaſe, for this that the doner to whom the re-
leaſe was made then had nothing in the land,
but onely a right, & ſo the right of the land may
not paſſe by ſuch releaſe of the doner. In the
ſame maner it is if a leaſe be made to one for
terme of life, reſerving to the leſſour & to his
heires certain rent, if the leſſee be diſſeiſed, and
after the leſſour releaſeth to the leſſee and to
his heires, & after the leſſee entreth, howbeit
that in the caſe the rent is extinct, yet nothing
of the right paſſeth &c. Cauſa qua ſupra. But
if it be by leaue and by tenaunt, and the te-
nant maketh a feoffement in fee, the which fe-
offee never became tenant to the lord &c. if the
Lord releaſe to the feoffour all his right &c.
that releaſe is voide, for this that the feoffour
hath no right in the land, and hee is no tenant
in right to the lord but onely tenant as for the
moweth to be made, & he ſhall never compel the
lord to ſuffer vppon him, for the lord may e-
nowe vppon him the feoffee if he will. Other-
wiſe it is where the very tenaunt is diſſeiſed
as in caſe aforeſaid, for if the very tenant that
is diſſeiſed holdeth of the lord by knights ſer-
uice & dieth, his heires being within age, the
lord ſhall haue & ſeiſe the warde of the heire.
And ſo he ſhal not haue the ward of the feof-
four that made the feoffement in fee, and ſo it
is a great diuerſitie betweene theſe two caſes.

¶ Alſo if a manne enfeoffe another in his
lande vppon truſt, and to the intent that hee

ſhall

that perfourme his laſt will, and the feoffour occupyeth the ſame at the will of his feoffees, and after the feoffees releaſe by their dede vnto the feoffour all the right &c. This hath ben in queſtion if ſuch releaſe bee good or not, and ſome haue ſaide that ſuch releaſe is good for thus, that no priuitie was betweene the feoffees & their feoffour, in ſo much that no leaſe was made after ſuch feoffement by the feoffees to their feoffour to holde at their will &c. and ſome haue ſaid the contrary, & ỹ for two cauſes. One is, that whē ſuch feffements are made vpon confidence to perfourme the will of the feoffour, that it ſhalbe vnderſtād by the law ỹ the feoffour by & by ought to occupy the land at the will of his feoffees, & ſo it is ſuch maner of priuity betweene thē, as if a man made a feoffemēt to another perſon, & they incōtinēt vpō the feoffement will ſay and graunt that the feoffor ſhall occupy the land at their will &c. In other caſule they alledge, that if ſuch land bee worth xl.s. by yere &c. Then ſuch a feoffour ſhalbee ſworne in aſſiſes & in other inquiſites, in pleas reals and alſo in pleas perſoneis, of what great ſommes ſoeuer that the plaintifes will declare &c. And this is by the cōmō law of the land. Ergo this is for a great cauſe, & the cauſe is that the lawe will that ſuch feoffour and their heires ought to occupie &c. And to take thereof the rent & al the profit, and all manner of yſſues and reuennes &c. as though the tenementes were their owne

without interruption of feoffees, notwithſtāding ſuch feoffements. Ergo the ſame law geueth a priuity betwene ſuch feoffours, & their feoffes vpon confidence &c. For which cauſe they haue ſayd that the releaſe made by ſuch feoffes vpō confidēce to the feoffour, or to hys heires &c. ſo occupying the lād &c. ſhalbe good ynough &c. And this is the better opinion as it ſemeth. Alſo releaſes after þ maner in dede ſometyme haue their effect by force to enlarge the eſtate of them, to whom the releaſe is made, as if I let certayne lande to a man for terme of yeares, by force whereof hee is poſſeſſed, & I releaſe vnto hym all the right that I haue in the land without more wordes ſet or put in the deede, and delyuer vnto him the deede. Then hee hath eſtate but for terme of hys lyfe, and the cauſe is for thys, that when the reuerſion or the remainder is in a man the whych will enlarge by his releaſe the eſtate of the tenant &c. hee ſhall haue no greater eſtate, but in the maner and fourme, as if ſuch a leſſour were ſeyſed in fee, and will by hys dede make eſtate to one in a certeine fourme &c. and delyuer vnto hym ſeyſin by force of the ſame deede if in ſuch deede of feoffemēt there be no worde of inheritaunce &c. Then hee hath eſtate but for terme of life &c. and ſo it is in ſuch releaſe made by him in the reuerſyon, or in the remainder, for yf I let lande to a manne for terme of lyfe, and after I releaſe vnto him all my ryght without more ſaying in the re-

leaſe

leaſe his eſtate is not enlarged. But if I releaſe vnto him & to his heires of his body engendred, then hee hath fee taile, & if I releaſe vnto him & to his heires, thē he hath fee ſimple. So it behoueth in ſuch caſe to ſpecify in ỹ deede, what eſtate hee to whom the releaſe is made ſhal haue &c. And ſometime releaſe ſhal enure to ler & put the right of him ỹ maketh the releaſe to him, to whō the releaſe is made, As a man is diſſeiſed & he releaſeth vnto the diſſeiſour al the right ỹ he hath. In this caſe ỹ diſſeiſour hath his right, ſo ỹ where his eſtate before was wrong, now by the releaſe it is lawful & right, but note wel ỹ when a mā is ſetled in fee ſimple of any lands or tenemēts, and another wil releaſe vnto him all the right that he hath in the ſame tenements, it needeth not to ſpeake of the heires of him to whō the releaſe is made, for this that hee had fee ſimple at the time of the releaſe made, for yf the releaſe were made to hym and to hys heires for one day or for one howre, this ſhalbee as ſtrong vnto him in the lawe, as hee had releaſed to hym and to his heires, for when his right was gone from him at one tyme by his releaſe without any condition &c. to hym that had fee ſimple it is gone for euer. But where a man hath a reuerſion, or a remainder in fee ſimple at the tyme of the releaſe made, there if hee will releaſe to the tenaunt for terme of yeares or for terme of lyfe, or in the tayle, it behoueth to determyne the eſtate

that he to whō the releaſe is made ſhall haue by force of the ſame releaſe. For this ꝑ ſuch releaſe goeth to enlarge ꝑ eſtate &c. of hi to whō the releaſe is made. But otherwiſe it is wher a man hath but a right vnto the land & hath nothing in the reuerſion nor in the remainder in dede. For if ſuch a man releaſe al his right to one that is tenant of the frankt entāt al his right is gone, though that no mencō be made of his heirs of hi to whō the releaſe is made. For if I let land to a man for terme of life. if I after releaſe vnto hym for to enlarge hys eſtate yet it behoueth ꝑ I releaſe vnto him & to his heires of his body engendred. or to him & to his heires males of his body begotten or by ſuch ſemblable eſtate &c. or otherwyſe hee hath no greater eſtate thē he had before. But if my tenant for terme of life let the ſame lād out to another for terme of ꝑ life of his leſſee, ꝑ remaynder vnto another in fee, nowe if I releaſe vnto him to whom my tenant letted for terme of life, I ſhalbe barred for euer, though ꝑ no mencion be made of his heires, for thys that at the time of the releaſe made I had no reuerſion but onely a right to haue the reuerſion. For by ſuch a leaſe with a remainder ouer that my tenant made, in this caſe my reuerſion is diſcōtinued & ſuch a releaſe ſhal enure vnto him in ꝑ remainder to haue aduantage of thys as well as to the tenaunt for terme of lyfe, for to that entent the tenaunt for terme of life & he in the remaynder be as one

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tenaunt in the law, & be as if one tenaunt were ſole ſeiſed in his demeane as of fee at the time of ſuch releaſe made vnto him. Alſo if a man be diſſeyſed by two, if hee releaſe vnto one of the he ſhal hold his fellow out of the lande & by ſuch releaſe ſhal haue ſole poſſeſſiō & eſtate in the land. But if one diſſeiſour enfeoffe two in fee, & the diſſeiſi releaſe to one of them thys ſhal enure to both the ſaid feffees. And ℔ ſome of the diuerſitie betweene theſe two caſes is repugnant ynough.

¶ Alſo if I be diſſeiſed, & the diſſeiſor is dyſſeiſed if I releaſe to the diſſeiſor of my diſſeyſor, I ſhall neuer haue aſſiſe nor entre vppon his diſſeiſour, for this that his diſſeiſour hath my right by my releaſe &c. And ſo it ſemeth in this caſe that if there were twenty diſſeiſours ech after other, and I releaſe to the laſt diſſeyſor he ſhal barre al the other of their actions, and their title. And the cauſe is as it ſeemeth, for this ℔ in many caſes when a man hath a lawful title to enter though he enter not &c. he ſhal defeat al mean titles by his releas &c. But this is not in euery caſe as ſhalbee ſaid afterwarde.

¶ Alſo if a man be diſſeiſed the which hath a ſonne vnder age, & dieth & being the ſonne vnder age the diſſeiſor dieth ſeiſed, & the land deſcendeth to the heire, and a ſtraunger abateth and after the forme of the diſſeiſee when he cometh vnto full age releaſeth all his right &c. to the abatour. In this caſe the heire of the diſſei-

ſour ſhal haue no aſſiſe of mort dãceſtor againſt the abatour, but he ſhalbee barred of the aſſiſe, for this that the abatour hath the right of the ſonne of the diſſeiſee by his releaſe, & the entre of the ſonne was lawful &c. for this ꝑ he was within age at the time of the diſcent &c. But if a man be diſſeiſed, & the diſſeiſour maketh a feoffement vpon a condition, ꝑ is to ſay, to yeld vnto him certaine rent and for the defaut of payment a reentre &c. if the diſſeiſee releaſe to ꝑ feffee vpon cõdition, yet this altereth not the eſtate of the feoffee vpon condition as it was before. In the ſame manner it is where a man is diſſeiſed of certeine lande, and the diſſeiſour graunteth a rent charge out of the ſame lande though that after the diſſeiſee releaſeth vnto the diſſeiſour &c. yet the rent charge abideth in his force. And the cauſe is in theſe two caſes, ꝑ a man ſhal haue none aduãtage by ſuch releaſe that ſhalbe againſt his owne ꝓper acceptãce, & againſt his owne graũt. And though ꝑ ſome haue ſaid that where the entre of a mã is congeable vppon a tenaunt if hee releaſe to the ſame tenaunt that this auaileth vnto the tenant ſo as if hee had entred vpon the tenant and after enfeoffed him &c. this is not true in euery caſe, for in the firſt caſe of theſe two caſes if the diſſeiſee in fee enter vppon the feoffee vpon condition and after enfeoffeth him, then the condition is all put afyde and voyde. And in the ſeconde caſe if the diſſeiſee enter and enfeoffe him that graunted the rent charge then

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ris ꝑ rēt: charge auoided. But it is not auoided by any ſuch releaſe vnto an entre made &c. Alſo if a mā be diſſeiſed by a child vnder age ꝑ which alieneth in fee, & the alienee dieth ſeyſed, & his heire entreth being the diſſeiſor vnder age: Now it is in the electiō of ꝑ diſſeiſee to haue a writ of Dū fuit infra etatē, or a writ of right againſt the heire of the alienee, & which writ ſoeuer he taketh of thē, he ought to recouer by the laſwe. And alſo he may enter into the land without any recouery, & in this caſe the ētre of the diſſeiſee is taken away, but in this caſe if the diſſeiſee releaſe his right to ꝑ heire of the alienee, & after the diſſeiſour bringeth a writ of ryght againſt the heire of the alienee, and he ioyneth the myſe vppon the cleare right &c. the Grand aſſiſe ought by the laſw to find that the tenāt hath more cleere right &c. then hath the diſſeiſour, for this that the tenaunt hath the ryght of the diſſeiſee & his releaſe which is more effectent and more clere right than the right of the diſſeiſour, for by ſuch releaſe, al the right of the diſſeiſee paſſeth vnto ꝑ tenāt, & is in the tenāt; And to this we haue ſaid, ꝑ in ſuch cas where a man hath right to lāds or tenemēts but his entre is not laſwful, if he releaſe vnto the tenāt &c. Then ſuch releaſe ſhal enure by way of extinguiſhemēt. And vnto this it may be ſaid, ꝑ this is trueth vnto him that releaſeth, for by his releaſe hee hath diſmiſſed himſelfe clene of his right as to his perſō. But yet the right ꝑ he had may wel paſſe & go vnto ꝑ tenāt by the re-

release, for it should be inconuenient that such an auncient right should be extinct al vtterly &c. for it is cõmonly said ỹ right may not lye but a release ỹ goeth by the way of extinguishment against al persõs, as where he to whõ ỹ release is made may not haue this ỹ vnto him is released. As if there be lord and tenant and the Lorde releaseth vnto the tenaunt al ỹ right ỹ he hath in the lordship, or al ỹ right &c he hath in ỹ lãd &c. such a release goeth by way of extinguishment against al persons, for thus, that the tenant may not haue the same of him selfe. In the sãe maner is a release made to ỹ tenãt of the land of a rẽt charge, or of a cõmon pasture, for this that ỹ tenãt may not haue ỹ that vnto him is released &c. So such releases goe away by extinguishment against al persons.

Also, to proue ỹ the graũd assise ought to passe for the demaundaunt in the case aforsaid. I haue hard often in the lecture vpon the statute of Westm. the second that beginneth. In casu quãdo vir amiserit per defaltã in tenementum quod fuit vxoris sue &c. that is at the common law before the statute, if a lease were made to a tenant for terme of life, the remainder ouer in fee, & a strãger by a fained action recouer against the tenant for terme of life by default, & after the tenant dieth, he in the remainder had no remedy before the statute, for this, that he had no possession of the lãd, but if he in the remainder had entred vpon the tenant for terme of lyfe, and disseised him, and after the

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tenant entreth vppon him, & after the tenaunt for terme of lyfe leaſeth by ſuch recouery had by defaut and dyeth, now he in the remainder may well haue a writ of right againſt him that recouered, for this that the miſe ſhalbe ioyned only vpon the clere right. And yet in this caſe the ſeiſin of him in the remainder was defeted by the entre of the tenāt for terme of life. But paraūcture ſome will argue and ſay, ỹ he ſhall haue no writ of right in this caſe, for this that when the miſe is ioined in ſuch maner, that is to ſay, if the tenant haue more clere right to the lande in the maner as it is holden, thē the demandant hath in the maner as he demaūdeth. And for this that the ſeiſin of the demaundant was defeated by the entre of the tenaunt for terme of lyfe, then he hath no right in the maner as he demaundeth. Unto this it may bee ſaid that theſe wordes (Modo & forma prout &c.) in many caſes bee wordes of maner of pleadinge, and no wordes of ſubſtance. For if a man bring a writ of entre (In caſu proviſo) of alienation made by ỹ tenant in dower to his diſenheritāce, & pleadeth of the alienatiō made in fee, & the tenant ſaith that he aliened not in the maner as the demaundant hath declared, & vpon this they be at iſſue, and it is founde by verdit that the tenāt aliened in the taile or for terme of another life the demaundant ſhal recouer, & yet the alienation was not in the maner as the demandant hath declared.

¶ Alſo if there bee Lord and tenant, and the

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tenant holdeth of the Lord by fealty only, and the lord diſtraineth ỹ tenãt for rẽt, & the tenãt bringeth a writ of treſpas againſt his lord for his cattel ſo takẽ, & the lord pleadeth ỹ the tenãt holdeth of him by fealty & certein rẽt, & for the rent behind he came to diſtrain &c. And demaundeth iudgement of the writ brought againſt hĩ. Quare vi & armis &c. And the other ſaieth that he holdeth not of him in the maner as he ſuppoſeth, and vpon this they be now at iſſu, & it is found by verdit that he holdeth of hym by fealty tantum: In this caſe the writ ſhal abate, and yet he held not of the lord in the maner as the lorde had ſaide, for the matter of the iſſue is, whether the tenant holdeth of him or not. For if he hold of him, though the lord diſtraine for other ſeruices that hee ought not to haue, yet ſuch a writ of this Quare vi & armis &c. lyeth not againſt the lord but ſhal abate.

¶ Alſo in a writ of treſpas of beatinge or of goods taken, if the defendaunt plede nothinge culpable in the manner as the pleintife ſuppoſeth, and it is founde that the defendant is culpable in an other town, or at an other day then the pleintife ſuppoſeth, yet he ſhal recouer. And in many mo other cales theſe wordes, that is to ſay in the maner as the demaundant or the pleintife hath ſuppoſed, bee no matter of ſubſtance of the iſſue, for in a writ of right where the miſe is ioined vpon the clere right, it is as much to ſay and to ſuch effect, that is to wite, whether hath the more ryght the tenaunt or

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the demaũdant to the thing ſo demaunded ꝛc.

¶ Alſo if a man be diſſeiled and the diſſeiſour dyeth ſeyſed ꝛc. and his ſonne entreth by deſcent, and the diſſeiſee entreth vppon the heire of the diſſeiſour, the whych entre is a diſſeyſin ꝛc. if ꝑ heire bring an aſſiſe or a writ of ryght againſt the diſſeiſee he ſhalbe barred. For this that when the graunde aſſiſe is ſworne, their othe is vpon the clere ryght and not vpon the poſſeſſiõ ꝛc. for if the heire of the diſſeiſour had brought an aſſiſe of nouel diſſeiſin, or a writ of ẽtre in nature of aſſiſe, & recouered agaynſt the diſſeiſee & ſued execution, yet may the diſſeiſee haue a writ of entre in the Per againſt him of the diſſeiſin made vnto him by his father, or he may haue againſt the heire a writ of ryght. But if the heire ought to recouer agaynſt the diſſeiſee in the caſe aforeſaid by a writ of right, then al his right ſhalbee clerely gone, for thys ꝑ a fynal iudgement ſhould be geeuen agaynſt him whych ſhould be againſt reaſõ where the diſſeiſee hath more clere right ꝛc. And knowe ye my ſonne that in a writ of right after thys that the fower knights be choſen in the graūd aſſiſe, then there is no greater delay thẽ a writ of Fourmdon after this ꝑ the parties bee at an iſſue ꝛc. & if the miſe be ioined vpõ battaile thẽ there is leſſe delay.

¶ Alſo a releaſe of al the right ꝛc. in ſõe caſe is good made vnto him that is ſuppoſed tenaunt in the laſwe though he haue nothing in the tenementes, as in a Precipe quod reddat,

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if the tenant alien the land hanging the writ & after ꝑ demandãt releaſeth to him al his right that releaſe is good, for this that hee is ſuppoſed to be tenant by the ſuit of the demandant, & yet he hath nothing in the lande at the time of the releaſe made. In the ſame maner it is if in a Precipe quod reddat, the tenant vouche, and the vouchee enter into the garrãty, if after the demaũdant releaſe to the vouchee al his right &c. this is good ynough, for this ꝑ the vouchee after this that he hath entred in the garrantie is tenant in law to the demandant.

¶ Alſo as to releaſes of actions reals and actions perſoneis it is ſo that ſome actions be mixt in the realtie and in the perſonalty, as yf an action of waſt bee ſued againſt the tenaunt for terme of life, this action is in the realty for this that the place waſted ſhalbee recouered. And alſo it is in the perſonalty for this that ꝑ treble damage ſhalbe recouered for ꝑ wrong & waſt done by the tenaunt, & for this in this actiõ a releas of action real is a good ple in bar & ſo is a releas of actions perſoneis. In the ſame maner it is in aſſiſe of nouel diſſeiſin, for this ꝑ it is mixt in the realty & in the perſonal tie, But if ſuch aſſiſe be arrayned againſt the diſſeiſour the tenant of the diſſeiſor may plede a releaſe of actions perſonals for to barre the aſſiſe but not releaſe of actions reals, for none ſhal plede a releaſe of actiõs reals in aſſiſe, but & ye tenants &c.

¶ Alſo in ſuch actions that behoueth to bee

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ſued againſt the tenaunt of the frankteneme̅t if the tenaunt haue a releaſe of actions reals of the demaundant made vnto him before ỹ writ purchaſed & he pleadeth it, this is a good plee for the demaũdant to ſay, that he that pleadeth that plee, had nothing in the frankteneme̅t in time of releaſe made for that hee had no cauſe to haue action real againſt him.

¶ Alſo in ſuch caſe where a man may enter in lands or teneme̅ts, he may haue of this an actiõ real, which is geuẽ vnto him by the lawe againſt the tenaunt. As in this caſe the demaundant releaſe to the tenaunt al maner actions reals, yet this taketh not away ỹ entre of the demaũdant, but the demaundaunt may well enter, notwithſtandinge ſuch releaſe, for this that nothing is releaſed but the actiõ &c. In the ſame maner it is of things perſonels. As if a man wrongfully take my goods, if I releaſe vnto him al actions perſonels, yet I may by the lawe take my goodes out of hys poſſeſſion.

¶ Alſo if I haue cauſe to haue a writ of Detinue of my goods againſt another though ỹ I releaſe vnto him for al actions ploneis, yet I may take my goodes out of his poſſeſſion, for this that no right of goodes is releaſed to him but onely the action &c. Alſo if a man bee diſſeyſed, and the diſſeyſour maketh a feoffement vnto dyuers perſons to his vſe, and the diſſeiſour continually taketh the profites &c. and the diſſeyſy releaſeth vnto him all actiõs

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reals, and after he ſueth againſt him a writ of Entre in nature of aſſiſe because of the ſtatute for this that hee taketh the profites. Enquire how the diſſeiſour ſhalbe holpen by the ſaid releaſe, for if hee wil plede the releaſe generally, then the demaundaunt may ſay that he had nothing in the frankftenement at the time of the releaſe made, and if he plede the releaſe ſpecially, thē it behoueth him to know a diſſeiſin, and then may the demaundaunt enter in lande &c. by his conſeiuance of the diſſeiſin &c. But peraduēture by eſpecial pleading he may be barred of the actiō that he ſueth &c. though that the demaundant may entet &c.

¶ Alſo if a man ſue appelle of felony of the death of his auncelter againſt another though the appellant releaſe vnto ỹ defendant al maner actions reals & pſonels, this ſhal not help the defendant, for this that this appell is not an action real, in ſo much ỹ the appellant ſhal not recouer any raitie, nor ſuch appel is no action pſonal. In ſo much ỹ the wrong was vnto his aſſeiſee and not vnto him, but if he releaſe to the defendant al maner of actions, then it ſhalbe a good barre in appelle, and ſo a man may ſee that a releaſe of al maner of actions is better then a releaſe of al maner of actions reals & perſonals &c.

¶ Alſo in appele of robbery if the defendant wil plede a releaſe of the appellant of al actyons perſonels, this ſeemeth no plee, for an action of appele where the appellant ſhall haue

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iudgement of death &c. it is more high then an action perſonal, and it is not properly ſaid an action perſonal, and therefore if the defendant will haue a releaſe of the appellaunte to barre him of the appeale, it behoueth him to haue a releaſe of all maner of actions of appele of releaſe, or of all manner of actions as it ſeemeth &c. But in appele of maihim a releaz of al maner of actiõs perſonals is a good plee in barre, for thys that in ſuch an action hee ſhall recouer but dãmages.

¶ Alſo if a man bee outlaſwed in an action plonal by proceſſe of the original, & hig a writ of errour, if he at whoſe ſuit he was outlaſwed will plede againſt him a releaſe of actiõs perſonals, this ſeemeth no plee, for by the ſaid actiõ he ſhal recouer nothing in the perſonalty, but al onely to reuerſe the outlaſwry, but a releaſe in a writ of errour ſhalbe a good plee &c.

¶ Alſo, if a man recouer det or dammage, & he releaſe to the defendaunt all maner of actiõs, yet he may laſwfully ſue executiõ by Capias ad ſatisfaciendũ, or by Elegit, or by Fieri facias, for execution by ſuch writte may not bee ſayde an action, but yf after a yere & a day the plaintife will ſue a Scire facias to haue execution &c. thẽ it ſeemeth a releaſe of al actions ſhalbe a good plee in barre, but ſome haue thought the contrary, in ſo much that the writ of Scire facias is a writ of execution, & is to haue execution. But in ſo much that vpon the ſame writ ỹ defendãt may plede diuers matters

trers after the iudgement geue to put him fro execution, as outlawry & diuers other &c. therfore it may well be said actiõ &c. & I trowe þ in a Scire facias out of a fine a releasse of all manner of actions is a good plee in barre, but where a man hath recouered det or dãmage & it is accorded betweene thẽ þ the plentife shal be put out fro actiõ, thẽ it behoueth þ the plentife make a releasse to him of all maner actiõ.

¶ Also, if a man releasse to another al maner demaũds, this is the most best releasse, þ he to whõ the releasse is made can haue, & most shall enure to his aduantage; for by such releasse of al maner of demaũds al maner of actiõs reals personels, & actions of appeles be gone & extinct, and al manner of execution bee gone and extinct. And if a man hath title to entet in any landes or tenements by such releasse, his title is gone. And if a man haue rent seruice or rent charge or cõmon of pasture &c. by such releasse of all maner demaundes to the tenaunt of the land, whereof the seruice or the rentre is going out, or in what land soeuer the common bee, the seruice and rent, & the commõ is gone and extinct &c.

¶ Also if a man releasse to another all maner quarels, or all controuersies or debates betweene them. Enquire to what matter, and to what effect such wordes extend.

¶ Also, if a mã be bound by his deede to an other i a certein sũme of money to pay at þ feast of S. Michael thẽ next following &c. if þ obli-

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lige before the ſaid feaſt, releaſe to the obligour all actions he ſhalbe barred of the duety for euer, & yet he might haue no action at the time of the releaſe made. But if a man let lande to another for terme of yeres to yelde at the feaſt of ſaint Michael next enſuing xl. ſhillinges & before the ſame feaſt hee releaſeth to the leſſee al actiõs, yet after the ſame feaſt he ſhal haue an action of Det for the non payment of the xl. ſhillings notwithſtãding the ſaid releaſe. Studie the cauſe of the diuerſitie betweene theſe two cales.

¶ Alſo, where a mã will ſue a writ of right it behoueth ỹ he plede of diſſeiſin of him or of his auncelters, & alſo ỹ the ſeiſin was in time of the laſt king as he pleadeth i his plee, for this is an efficient law pled as it apereth by report of a certein plee, in ſuch ſomme as enſueth. Sir John Warrey brought a writ of right againſt Raynold Ifflington, & demaſided certein tenements &c. the mile was ioined in the bãke, & the originall & the proceſſe were ſent before Juſtices errãts, where the parties came & the xij. knights were ſworne without challenge of the parties to be a'owed for this ỹ the election was made by aſſet of the pties which the foure knightes . and the othe was ſuche, that I ſhal ſay trouth &c. whether R. of B. haue more ryght to holde the tenements that John Warrey demaſided againſt him by his writ of right or John to haue the tenements as he demaundeth, and for nothing to let to

ſay the trouthe as god me helpe &c. without
leying to their knowledge, & ſuch othe ſhalbe
made in attaunt, & in battaile, and in waging of
law, for thoſe do euery thing but o an ēd. But
I. Barrey pleded of ꝑ diſſeiſt of one Rafe his
aūceſter in time of king Henry, & Raynold vpō
the miſe ioined tendered halfe a marke for the
time &c. & vpō this Herle Juſtice ſayed to the
graund aſſiſe, after ꝑ they were charged vpon
ꝑ clere right, goodmen, Raynold gaue halfe a
marke to ꝑ king for ꝑ time to ꝑ intent ꝑ if ye
find ꝑ the aūceſter of John was not ſeiſed in
time ꝑ the demaundant hath pleded you ſhal ē-
quire no further vpon the right, & for this ye
ſhal ſay to vs whether the aunceſter of John
Rafe by name was ſeiſed in the tyme of king
Henry, as he hath pleded or not, & if ye find ꝑ
he was not ſeiſed in the time, ye ſhal enquire
no more, & if ye find ꝑ he was ſeiſed, then en-
quire farther of the right, and after the graūd
aſſiſe came to their verdict, & ſaid ꝑ Rafe was
not ſeiſed in the time of king Henry, whereby
it was awarded ꝑ Raynold ſhould holde the
tenemēts againſt him demaūded to him and to
his heires quite of I. Barrey & his heires to
the remenant, & John in the mercy.

¶ Confirmation.

A Dede of confirmation is moſt commonly
in ſuch fourme or to ſuch effect. Nouerint
vniuerſi &c. me A. de B. ratificaſſe, approbaſſe,
& confirmaſſe C. de D. ſtatū & poſſeſſion quas

habeo

habeo de & in uno mesuagio &c. cũ pertinenč in N. & in some case a dede of cõfirmatiõ is good and vaylable, where in the same case a dede of release is not good nor vailable. As I let land to a mã for terme of his life, the which letteth ỷ same land to another for xl. yeres, by force of the which he is possessed, if I by my dede confirme ỷ state of ỷ tenãt for terme of yeres & ỷ tenant for terme of life dieth during the terme of yeres, I may not entre in the land duringe the same terme, yet if I by my dede of release haue released to the tenant for terme of yeares in the life of the tenant for terme of life, the release shalbe void, for this that then no priuity was betwene me & the tenãt for terme of yeres, for a release is not auaylable to the tenant for terme of yeres but where a priuitie is betwene him, & him ỷ releseth. In the same maner is if I bee disseised, & the disseisor maketh a release to an other for terme of yeares, yf I release unto the termor ỷ is void, but if I cõfirme ỷ state of ỷ termor that is good & effectuel. Also if I bee disseysed & I confirme the state of the dissei[s]our then he hath a good and rightful estate ĩ fee simple though ỷ in ỷ dede of cõfirmation no menciõ is made of his heirs for this ỷ he had fee simple at ỷ time of the cõfirmatiõ, for in such case if the disseisy cõfirme ỷ estate of the disseisor, to haue & to hold to hĩ for t'me of his life, yet ỷ disseisor hath fee siple & is seised in his demesne as of fee, for this ỷ whẽ his estate was cõfirmed he had fee siple & ĩ such ded he may not chãge his estate whout

 entre upon

vpō him &c. in the ſame maner it is if the eſtate be cōfirmed for terme of a dey or for terme of an hower, he hath a good eſtate in fee ſimple for ꝑ that his eſtate i fee ſimple was hee cōfirmed, for Cōfirmare idē eſt qđ firmū facere. Alſo yf two be diſſeiſoures & the diſſeyſy releaſeth to the one, he ſhal hold his feloſwe out of the lād, but if the diſſeiſy confirme the eſtate of ꝑ one wout more ſpeache in the deede, ſome ſay ꝑ he ſhal hold his feloſw out but he ſhal hold ioint-ly wt him, for this ꝑ nothyng was confirmed but this eſtate ꝑ was ioint, & for this cauſe haue ſaid ꝑ if ij. iointenants bee, & the one cōfirmeth the eſtate of the other, ꝑ he hath but a tount eſ-tate as he had before, but if he haue ſuch wor-des in the deede of cōfirmatiō to haue & to hold to him & to his heires al the tenemēts wherof mēcion is made in the cōfirmation thē he hath eſtate ſole in the tenements, & therefore it is a good & a ſure thig in euery cōfirmatiō to haue theſe wordes to haue & to hold the tenements &c. in fee or in fee taile, or for ſime of life, or for terme of yeres after as the cauſe or the mat-ter is, for to the entent of ſome, if a mā let lād to another for terme of life, & after hee confir-meth his eſtate by theſe wordes to haue & to hold his eſtate to him & to his heires, this cō-firmation as concerning his heirz, is void, for his heires cannot haue his eſtate which was but for terme of life, but if he confirme his eſ-tate by theſe wordes to haue the ſame land to hym & to his heires this confirmation maketh fee ſimple in this caſe to hym in the lande for

this

this ꝑ these wordꝭ to haue & to hold &c. goeth in ꝑ lād not to ꝑ eſtate ꝑ he hath &c. Alſo if I let certain lād to a womā ſole for terme of her life the which taketh a huſbād, & after I confirme the eſtate to ꝑ huſbād & to the wife for terme of their two liues, in this caſe the huſbād holdeth not iointly wt ꝑ wife, but holdeth ꝑ right of his wife for terme of his life, but this cōfirmatiō ſhal enure to the huſband by way of remaider for terme of his life. if he ſurmiseth his wife, but if I let lād to a woman ſole for terme of yeres, which taketh a huſbād & after I cōfirme ꝑ eſtate to ꝑ huſbād & ꝑ wife for terme of both their liues, in this caſe they haue ioint eſtate in ꝑ franktenemēt of the land for this ꝑ the wife had no frāktenemēt before. Alſo if a perſon of a Church charge the glebe of his church by his dede, & the patrō & the ordinary cōfirme the ſāe graūt, & al ꝑ is cōpriſed wtin the ſāe graūt, then the ſame graūt ſhalbe in his ſtrength after the purpoſe of the ſame graūt. but in ſuch caſe it behoueth that the patron haue fee ſimple in the auowſon, for if hee haue eſtate in the auowſon for terme of life or in taile, thē the graūt ſhal ſtād but during his life & the life of the perſon that graunted it &c. Alſo if a mā let lande for terme of life. which tenāt for terme of life chargeth the lād with a rent in fee, & he in ꝑ reuerſion confirmeth the ſame graūt, this charge is good inough & effectual. Alſo if there be a ꝓpetual chauntry wherof the ordinary hath nothing to medel nor to do, the patron of the chauntry, and the Chap-

lain of the same chauntry may charge ꝑ chauntry with a rent charge in perpetuitie. Also in some case these verbes dedi & concessi haue the same effect in substaunce, and shal enure to the same entent as this verbe confirmani, as if I be disseised of a plough land and after I make such a deede &c. Sciant presentes &c. quod dedi to the disseisour the saide plough lande &c. And if I deliuer al only the dede to him with out liuery of seisin of the lande, that is a good confirmation, and as strong in the lawe, as yf he had in the deede this verbe confirmani &c. Also I let lande to a man for terme of yeres, by force of which he is possessed, and after I make to him a deede &c. Quod dedi vel concessi &c. the same lande, to haue for terme of his life, and deliuer hym his deede, then by and by hee hath estate in the lande for terme of his lyfe, & if I say in the deede to haue to him and to his heires of hys body engendred hee hath estate in the tayle, and if I say in the deede to haue and to holde to hym, and to his heires, he hath estate in fee simple for this shal enure to him by force of confirmation to enlarge his estate. Also if a man be disseised, & the disseisor dieth seised, & his heire is in by discent, after ꝑ disseisee, & ꝑ heire of the disseisour make iointly a dede to another in fee, & liuery of seisin vppon this is made, as to the heire of the disseisor ꝑ declareth the dede, the tenements passe by the same dede by waye of feoffement, and as to the disseysee that declareth the same dede, this shall not enure

ure but by way of confirmation, but if the disseisee in this case bring a writ of Entre in the (per & Cui) against the alienee of the heire of ỹ disseisor, enquire how ye shal plede that deede against the defendant by way of confirmation &c. And knowe ye this my childe, that it is one of the most honorable, lawdable, and profitable things in our law to haue the science of wel pleding, in actions reals & personals, and for this I counsaile thee, specially to set thy courage & care to learne that. Also if there be lord and tenaunt, and the lorde confirmeth ỹ estate that the tenaunt hath in the tenements, yet the seignyory wholy abideth to the lord as it was before. In the same maner it is, if a man haue a rent charge out of certaine lande, & hee confirme the state that the tenant hath in the lād, yet abideth to the confirmour the rent charge. In the same maner it is if a man haue cōmon of pasture in the land of any other, if hee confirme the state of the tenant of the lād, nothing shal depart from hym of his common, but this notwithstanding the common abideth to hym as it was before.

¶ But if there be lord and tenāt which holdeth of his lorde by seruice of fealtie and xx.s. of rent, if the lorde by his deede confirme the estate of the tenaunt to hold by xij.d.j. ō. or by an ob, in this case the tenaunt is discharged of al other seruice, and shall yelde nothing to the lord but that that is compriſed within the sāe confirmation, yet if the lorde will by the deede of confirmatyon that the tenaunt in thys case

ought to yeld to him an hawk or a rose yerely at such a feast &c. this reseruation is void, for this that he reserueth to him a new thing that neuer was parcel of the seruices before ỹ confirmatiõ, & so the lord may abridge the seruices by such confirmation, but he may not reserue to him a new seruice &c.

¶ Also, if there be lord meine & tenãt, & the tenant is an abbot ỹ holdeth of the meine by certein seruices yerely, ỹ which hath no cause to haue acquitance against his meine for to bring a writ of meine &c. In this case if ỹ meine cõfirme the state ỹ the abbot hath in the land, to haue & to hold the land vnto him & his successours in frankalmoigne or free almes &c. in this case this confirmation is good, & then the abbot holdeth of ỹ meine en frankalmoigne, & the cause is for this, ỹ no new seruice is reserued for al the seruices specially specified, be extinct & nothing is reserued to ỹ meine, but the abbot shal hold of the lande, & that was before the confirmation, for he that holdeth in frankalmoigne ought to do no bodely seruice so that by such confirmatiõ it appereth ỹ the meaine shal not reserue vnto him no new seruice but that the lands shalbe holden of him as it was before, & in this case the abbt shal haue a writ of Meine if he be diltrained in his default by force of the said cõfirmation where perase he might not haue such a writ before &c.

¶ Also if I be seised of a villaine, as of a villein in grosse, & another taketh him out of my possessiõ claimig him to be his villain, whereas he

he hath no right to haue hi as his villein, & af
ter I cõfirme the state to him ꝑ he hath in my
villein, this cõfirmatiõ semeth void, for this ꝑ
none may haue possessiõ of a mã as of a villein
i grosse, but he which hath right to haue hi as
his villein in grosse, & in so much ꝑ he to whõ
ꝑ cõfirmatiõ was made, was not seised of him
as of his villain at the time of the cõfirmatiõ
such confirmation is voide, but in this case yᵗ
such wordes were in the dede. Sciatis me de-
disse & cõfirmasse tali &c. talẽ villanũ meũ, this
is good, but this shall enure by force & way of
grant & not by way of confirmation &c. Also
sometimes these verbes (dedi & concessi) enure
by way of extinguishment of the thing geuen
or granted. As a tenant holdeth of his lord by
certein rent, & the lord by his dede graunteth to
the tenant & to his heires the rent &c. this shal
enure to the tenãt by the way of extinguishmẽt
for by this grant the rent is extinct. In this
sãe maner it is where one hath a rent charge
of certein land, & he granteth to the tenant of
the land the rent charge, & the cause is for this
that it appeareth by the wordes of the graunt
that the wil of the donor is, that the tenãt shal
haue the rent &c. in so much that he may haue
no rent out of his owne land, for this the dede
shalbe vnderstande and takẽ for the most ad-
uauntage and auayle of the the tenant, that yᵗ
may be taken, and that it is by way of extin-
guishment. Also if I let land to a manne for
terme of yeres, and after I confirme his estate
without mo wordes put in the dede, hee hath

no

no greater estate but for terme of yeres as hee had before. But if I release to him my right that I haue in the lande wythout mo wordes put in the deede, hee hath estate of franketenement, and so marke thou my child vnderstande great diuersities betweene releases and confirmations. And if I bee within age and let lande to one for terme of xx. yeres, & he graunteth the lande for terme of x. yeares, so that he graunteth but parcel of his terme: In this case when I am of full age if I release vnto the graunte of my lease &c. this release is voyde, for this that there is no priuity betweene him and me. But if I confirme his estate, the this confirmation is good, but yf my lesse graunt all his estate to another, then my release made to the grauntee is good and effectuall. Also yf a man graunt a rent charge out of his land to an other for terme of hys life, and after I confirme his estate in the said rent, to haue and to hold to him in fee taile, or in fee simple, thys confirmatio is hold, as to the enlarging of his estate for this, that hee that confirmeth had no reuersion in the rent, but if a manne seysed in fee of rent seruice or of rent charge, and he graunteth the rent to another for terme of lyfe, and the tenant attorneth, and after he confirmeth the estate of the grauntee in fee tayle or in fee simple, this confirmation is good as to enlarge his estate after the wordes of the deede of confirmatyon, for this, that he that confyrmed the estate at the time of the confirmatyon had the reuersion of the rent &c. But in this case

aforesaid, where a man graunteth a rent charge to another for terme of life, if he will that the graunt̄ee shal haue estate in the taile or in fee, him behoueth that the deede of the graunt̄ee of the rent charge for terme of life, bee resurrendred or cancelled, & then to make a newe deede of such a rent charge, to haue & to take to the graunt̄ee in the taile or in fee. Ex paucis dictis intendere plurima poteris.

¶ Attournement.

An Attournement is if there be lord & tenant, & the lord will graunt by his deede the seruice of his tenant to another for terme of yeres, or for terme of life, or in tayle, or in fee, him behoueth y tenaunt attorne to the graūtee in y lyfe of the graunt̄our by force and vertue of y graūt, or otherwise the graūt is voide and attornement is none other thinge in effect, but when the tenāt hath heard of the graūt made by his Lord, that the same tenant by word agree to the said graunt, as to say to y graūtee, I agree me to the graunt made to you, or I am wel content of the graunt made to you &c. but the more commonal attournement is to say, Sir, I attorne to you by force of the same graūt or I become your tenant &c. or to deliuer vnto the graunt̄ee 1.d.ob. or farthing by way of attournement &c.

¶ Also if a man be seised of a manour which manor is parcel in demeine & parcel in seruice, if hee

if he will alien in such maner to another, it behoueth that by force of the alienat al the tenits that hold of the alienor as of this manner &c. attorne to the aliener or otherwise the seruices abide cõtinually in the alienor, except tenantes at will, for it nedeth not that tenãts at will attourne vpon such alienatiõ &c. for this that the same landes or tenemẽts that they hold at will do passe to ỹ aliener by force of such alienatiõ.

¶ Also if there be lord and tenaunt, and the tenãt letteth the tenemẽts to a man for terme of life the remaynder to another in fee, ỹ the lord graunt the seruices to the tenãt for terme of life in fee, in this case ỹ tenit for terme of life hath fee in the seruices, but ỹ seruices be put in suspẽce during his life, but his heirs shal haue the seruices after his death, and in that case it nedeth not an attornemẽt, for by the acceptãce of the dede of him that ought to attorne, thys is attornement in him selfe &c. but where the tenant hath as great and high estate in the tenementes as the lorde hath in the seigniory, in such case if the lord grãt the seruices vnto the tenãt in fee, this sureth by way of extinguishment, Causa patet.

¶ Also if there be lord & tenant, & the tenant maketh a lease to one for terme of life, sauing ỹ reuersion vnto him, if the lord graūt the seygniory to the tenit for terme of life in fee, in this case it behoueth ỹ he in the reuersiõ attorne to the tenit for terme of life by force of ỹ graūt, or otherwise ỹ graunt is void, for this that he in

the

the reuersion is tenant to the lord.

¶ Also if there be lord and tenāt, and the tenaunt holdeth of the Lord by twenty manner of seruices, and the lord graunteth his seigniourie to another, if the tenaunt pay or do one of the seruice to the graūtee, this is a good attournement of and for the seruyces though that the tenauntes entent was to attorne but of the same parcell, for this that the seigniourie is an whole thing, though þ there be diuers manner of seruices that the tenaunt ought to do.

¶ Also if there be Lorde and tenaunt and the tenaunt holdeth of the Lorde by many maner of seruices, and the lord graunteth the seruices to another by fine, yf the graūtee sue a Scire facias out of the same fine, for any parcel of the seruices & hath iudgement to recouer, this iudgement is a good attournement in the law for al the seruices.

¶ Also if the Lord of the rent graunteth the seruices vnto another, and the tenant attourneth by a peny, and after the graūtee distraineth for rent behinde, and the tenaunt to hym make the rescous. In thys case the graūtee shall not haue assyse of the rent but hee shall haue a writ of Rescous for that the gift of þ peny was but by way of attournement. But if the tenaunt had geeuen vnto the graūtee the said peny as parcel of the rent or an halfe peny, or a farthing by way of seysin of the rent, then this is a good attournement, and also yt is

is a good seisin to the grauntee of the rent, and then vpon such rescous the grauntee shal haue an assise &c.

¶ Also if a man let tenements for tme of yeres by force of which the lessee is seised, & after the lord graunteth by his dede the reuersion to another for terme of life, or in taile, or in fee, it behoueth hi in this case ꝑ the tenãt for terme of yeres attorne, or otherwise nothing passeth to such grauntee by such deede, & if in this case the tenant for tme of yeres attorne to ꝑ grantee, then by & by passeth the franktenement to ꝑ grauntee by such attornemẽt without any lyuery of seisin &c. for this if any liuery shall bee made or nedeth to be made in such case, then ꝑ tenant for terme of yeres shalbe at time of the liuery of seisi out of his possessiõ which should be against reason.

¶ Also if lande be let to a man for terme of yeares, the remainder to another for terme of lyfe reserving to the lessour a certayne rent by yeare, and lyuerie of seysin is made vpon this to the tenaunt for terme of yeares, if he in the reuersion in such case graunt his reuersiõ to another &c. and the tenant that is in the remainder after the terme of yeares attourneth. this is a good attournement, and hee to whom the reuersion is graunted by force of such attournement shal distraine the tenant for terme of yeares for the rent due after such attournement though the tenant for terme of yeres neuer attourned vnto him, and the cause is for

that

that where the reuersion is dependant vppon the state of frankstenement, it suffyseth that the tenant of the frankstenement attorne vpon such graūt of reuersion &c. & it is to wit, that where a lease for time of yeres or for terme of life, or a gift in the taile is made to any mā, reseruing to such a lessor or donor certein rēt, yf such a lessour or donour graūt his reuersiō to another, & the tenant of the land attorne, the rent passeth to the graūtee, though in the dede of the graūt of reuersiō, no mēcion is made of the rent, for this, for the rent is incident to the reuersion in such case, & not to the reuersio. For if a mā will graūt ꝑ rēt i such case vnto another reseruing to hī the reuersiō of the lād, though the tenant attorne to the graūntee, this shalbe but a rent seck &c.

¶ Also, if a man let land vnto another for terme of lyfe, and after such lease hee confirmeth by a deede the estate of the tenaunt for terme of life, the remainder to another in fee, and the tenaunt for terme of lyfe accepteth the dede, then is the remainder in deede to him to whō the remainder was geuen or lymitted in the same deede, for by the acceptaunce of the tenant for terme of life of the same deede this is a graunt of hun and so an attournement in lawe, but yet hee in the remainder shall haue none action of waste nor other benefite by such remainder, but if that he haue the same dede in his hand, by which the remainder was graūted vnto him, and for thys that in such case

the

the tenant for terme of life will retaine to hym the deede, to the entent that he in the remainder shall haue an action of waste against him, for this that he may not come to haue ye possession of the dede &c. It shal bee good in such case for him in the remainder, that a deede indented be made by hym that will make the confirmation, & the remainder ouer &c. And hee that maketh such confirmation deliuer a part of the Indenture to the tenãt for terme of lyfe, & the other part to him that hath the remainder, and then he by shewing of the part of the indenture may haue an action of waste against the tenant for terme of life, and also other aduauntage that he in the remaynder may haue in such case.

¶ Also if two toyntenauntes bee, whych letteth land to another for terme of life, yeldyng to them and their heires a certayne rent by yeare. In thys case if one of the two toyntenauntes in the reuersion release to the other toyntenaunt in the same reuersion, thys release is good, and he to whom the release is made, shall haue onely the rent of the tenaunt for terme of lyfe, and shall haue a writ of waste against them though hee neuer attourned by force of such release, & the cause is for the priuitie that once was betweene the tenaunt for terme of life and them in the reuersiõ. In the same maner, and for the same cause it is, where a man letteth land to another for terme of his lyfe, the remaynder to another

for

for terme of his life, reseruing the reuersion to the lessour, in this case if he in the reuersion release to him in the remainder &c. and to hys heires all his right &c. then he in the remainder hath a fee &c. and shal haue a writ of walt against the tenãt for terme of life without any attournement of him &c.

¶ Also if a lease be made for terme of life the remainder vnto another in the taile, & remainder ouer to ye right heires of the tenãt for terme of life, in this case if the tenant for terme of life graũt his remainder in fee to another by hys deede, the remainder by ye law passeth by his dede without any other attournẽt. For if any ought to attourne in this case, it should be the tenant for terme of life. And it were in vaine ye he attourne vpon his owne grant &c.

¶ Also if there be lord and tenaunt, & the tenaunt holdeth of the lord by certein rent and knights seruices, if the Lord graunt the seruices of the tenaunt by fine, the seruices be by and by in the graũtee by force of the fyne, but yet the lord may not distraine for any parcel of his seruices without attournement. But if the tenaunt die his heire being within age, the lord shal haue the ward of the body of the heire and of the land &c. howbeit that hee neuer attourned. For this ye the seignorie was in the graũtee maintenant by force of the fine. And also in some case if the tenant die without heire, the lord shall haue the tenaũcy by way of Eschete. In the same maner it is if a

man graūt the reuersiō to his wiues for terme of life to another by fine, the reuersion palleth not to the grauntee by force of the fyne, but the grauntee shal neuer haue action of waste without attournement &c. But yet if the tenant for terme of life alien in fee, the grauntee may enter &c. for this that the reuersion lyes in him by force of the fine, & such alienatiō turns to his disinheritance. But in this case where ℔ lord graunteth the seruices of his tenant by fine, if the tenaunt die, his heires being of full age, ℔ grauntee by the fine shal not haue the reliefe, nor neuer shall distraine for the relief except there had ben some attournement of the tenant that dyed &c. for of such thinges that lyeth in distrelle, vpon the which a writ of Reprisaire is sued &c. a man ought to make the taking good & righteous &c. there ought to be attournement of the tenant, notwithstanding ℔ the graunt of such seruices be by fine. But to haue writ of landes and tenementes so holden during the nonage of the heire of them to him by way of escheate, there needeth not any distrelle &c. but an entre in the landes by force of the ryght of the seigniory that the grauntee hath by force of the fine.

Also in auncient Boroughes or Cities where tenementes within the same boroughes or cities deuise deuysable by testament by the custome and the vse &c. if in such borough or citie a man bee seised of rent seruice or of rent charge, and he denyeth such rent or seruice to anos-

another by his testament & dyeth &c. In this case he to whō ỹ deuise is made may distreine for the rent or the seruices behynde, howbeit ỹ the tenant neuer attourned. In the same manner it is where a man letteth such tenementes desolate to another for terme of lyfe, or for terme of yeres, & deuiseth ỹ reuersiō by his testament to another in fee, or in fee taile, and dieth & after after ỹ the tenant maieth wast, he to whom the deuise was made shal haue a writ of wast, howbeit ỹ the tenant neuer attourned, & the cause is for that the wil of the deuysor made by the testament, shalbe perfourmed after the intent of the deuisor, & so ỹ effect of this lyeth vpon the attourning of the tenāt &c. Then percase the tenant would neuer attourne, then the will of the deuysour should neuer be perfourmed, and therefore the deuise shall distrayne or haue an action of wast &c. without attournemēt, for if a man deuise such tenements to another by his testament (habendū sibi imperpetuum) and dyeth, and the deuisee dyeth, he hath a fee simple, Causa qua supra, & yet if a dede of feoffement were made to him by the deuysour of the same tenements (habendum & tenendum sibi imperpetuum) ỹ liuerie and seysyn were neuer thereuppon made, hee shall haue none estate but for terme of life &c.

¶ Also if a man seysed of a Manour whych ys parcell in demeine, and parcell in seruyces, and thereof bee disseysed, but the tenaunt

ſwhich holdeth of the manour, neuer attorneth to the diſſeiſor in this caſe, howbeit ꝑ the diſſeiſor die &c. & his heire is in by diſcēt, yet may the diſſeiſy diſtraine for the rent being behinde & haue the ſeruice, but if the tenāts come to ꝑ diſſeiſour & ſay, we become your tenāts &c. or otherwiſe make attournement to hym &c. & after ꝑ diſſeiſor dieth ſeiſed &c. then ꝑ diſſeiſy may not diſtrain for the rēt, for this, that the maner diſcendeth to the heire of the diſſeiſour. But if one holde of me by rent ſeruice ſwhich is a freehold in groſſe, & another that no right hath, diſtreineth the rent & reteyneth & taketh the ſame rent of my tenaunt by coherſion of diſtreſſe or by other forme, & ſo diſſeiſeth me by taking ſuch rent, howbeit ꝑ ſuch a diſſeiſor die ſeiſed by ſuch taking of the rent, yet after his death I may well diſtraine for the ſame rēt being behinde before the death of the diſſeiſor & after his death, & the cauſe is this, ꝑ ſuch is not my diſſeiſour but by election at my will, for howbeit that he tooke the rent of the tenāt I may at all times diſtrain my tenant for ꝑ rent behind &c. for it is to me but as if I will ſuffer the tenaunt to bee by ſo much tyme behynde of payment to mee of the ſame rent, for the payment of my tenaunt to another to whom hee ne ought to pay is no diſſeiſin to me nor ſhall not put mee out of my rent ſwythout my will and election, for howbeit that I may haue aſſyſe againſt ſuch a taker &c. yet this is at my election if I will take hym as

my

ny diſtreine, or not, ſo that ſuch diſcentes of rentes for ought yet not out the lordes from their diſtreine, but that at eche tyme they may haue diſtreine for their rent behinde, and in this caſe of other the deceyte of him ꝑ ſo wrongfully take the rent, I graunt by my deede the ſeruices to another, & the tenant attorneth, this is good enough, and the ſeruices by ſuch graūt & attornement incontinent be in the graūtee &c. But otherwiſe it is where the rēt is parcel of the manour, and the diſſeiſour dieth ſeiſed of ꝑ whole manour, as in the caſe beforeſaid.

Diſcontinuance.

DIſcontinuance is an auncient worde in the lawe, and hath diuers ſignifications. &c. but as to one entēt it hath ſuch a ſignificatiō, that is to ſay, where a man hath eſtated to an other certayne landes or tenementes & dyeth, & another hath right to haue the ſame landes or tenements, but he ne may enter in them, becauſe of ſuch alienation &c. As if an abbot ſeyſed of certeine landes and tenementes in fee, and he aliuerth the ſame landes and tenementes to an other in fee or in tayle &c. for terme of lyfe, and the abbot dyeth, his ſucceſſour may not enter in the ſame landes or tenementes, howbeit that if ꝑ her hath right to haue the as in the right of the houſe, yet her is put to his action to recouer the ſame landes or tenements which is called a writ de ingreſſu ſine

assensu capitum.

¶ Also if a man seised of landes in the right of his wife &c. and thereof enfeoffeth all other &c. and dyeth, the wife may not entre, for that is put vnto her action, the which is called Cui in vita.

¶ Also if a tenant in the taile of landes and thereof enfeoffe another &c. & hath issue & dieth &c. his issue may not entre in the land, notwithstanding that he hath right & title to it, but that he is put to his action, that is called a Formedon in the discender.

¶ Also if there be tenant in the taile, & the reuersion is to the donour & to his heires if the tenãt make a feffement &c. and dieth without issue, he in the reuersion may not entre, but is put to his action of Formedon in the reuerter, & in the same maner it is where the tenant in the tayle of certain land where the remainder is to another in the tayle, or to another in fee, if the tenant in the taile alieneth in fee, or in fee taile &c. & he dieth without issue, they in the remainder may not entre, but be put to their writ of formedon in the remainder &c. and for this that they be forced of such feffement & such alienations in the Tales aforesayde, & in like cases they which haue title & right after the death of such a tenant by alienor may not entre, but be put to their actions vt supra: Therefore such feffements & alienations be called discontinuances.

¶ Also if a tenant in fee taile be disseised, & he releaseth by his deede to the disseisour & to his heires

heires of thy right y he hath in the same lād, this is no discontinuance, for thus y nothing of right passeth to the disseisour but for terme of life of y tenāt in the taile that made the release &c. But by the feffemēt of y tenant in the taile a fee simple passeth by the same feoffement by force of livery of seisin &c. but by force of a release nothing passeth but the right that he may lawfully & rightfully release without hurt or damage to other persones which thereto have right after his decease &c. & so it is a great dyversitie betwene a feffement of the tenaunt in the taile, & a release of the tenaunt in the taile, But it is said that if tenāt in the taile in this case release to the disseisour & bindeth him and his heires to warrantise &c. & dyeth, & this warranty discendeth to his issue, then that is a discontinuance because of warrantise &c. But if a mā have issue a sonne by his wife & dyeth, & after he taketh another wife, & tenementes be geven to him & his second wife &c. to y heires of their two bodies engendred, & they have issue another sonne, then the second wife dieth, & after the tenant in the taile is disseised, & he releaseth to his disseisor al his right &c. & bindeth him & his heires unto warrantise, & dieth, this is no discontinuance to the issue in the tayle by the second wife, but he may wel enter &c. for this that the warrantise descended to his elder brother, that his father had by hys first wife.

In the same maner where tenemēts be devisable.

table to the yonger sonne after the custome of borough English be entailed &c. & the tenant in the taile hath issue two sones & is disseised, & he releaseth to his disseisor al his right with warrantise & dieth, & yonger sonne may enter vpon the disseisor notwithstanding the warrantise, for this & the warrantise discendeth to the elder sonne, for although the warrantise discendeth &c. to him & is heire by the comon lawe.

¶ Also if an Abbot be disseised, and he releaseth to the disseisour with warrantise, this is no discontinuance to his successour, for this & nothinge passeth by this release but the ryght that he hath during the time that he is Abbot and this warrantise is expired by his priuatiō or by his death.

¶ Also if tenaunt in the taile be seised of certayne lande, and her letteth the same lande for terme of yeres, by force of which lease the lessee is in possession, to which possession the tenaunt in the tayle by his deed releaseth al his right that he hath in the same lande to the lessee, and to his heires for euer, this is no discōtinuance, but after the decease of the tenaunt in the taile his issue may well enter, for thys that by such release nothinge passeth but for terme of life of the tenant in the tayle. In the same maner if the tenant in the tayle confirme & estate of the lesse for terme of certain yeres, to haue and to holde to him and to his heires, this is no discontinuance, for thys that nothinge passeth by such confirmation, but the

estate

estate ꝑ the tenaunt in the taile had for terme of his life.

¶ Also if a tenāt in ꝑ taile by his dede graūt to another al his estate ꝑ hee hath in the tenements entailed to him, to haue & to hold al his estate to the other & to his heirs for euer, & deliuereth seisin accordinge: In this case the tenant to whom the alienation was made hath none other estate but for term of life, ꝯ tenāt in taile, & so it may well be proued ꝑ the tenāt in ꝑ taile may not graūt ne alien ne make any rightful estate of ꝑ franketenemēt to another plō but for terme of his own life &c. For if I geue certein land in the taile to a man, saūing ꝑ reuersion to me, & after the tenāt in the taile enfeoffeth another in fee, the feoffee hath no right estate in the tenements for two causes. One is for that ꝑ by such feoffemēt my reuersion is discōtinued which is a wrong act & not a rightful act: Another cause is, if the tenaunt dye and his issue sueth a writ of Formdon against the feoffee, the writ shal say & also the declaracyon ꝑ ꝑ feffee wrongfully him deforced, therfore if wrōgfully he hi deforced he had no right estate

¶ Also if lande bee let to a man for terme of his life, the remainder to another in the taile, if he in ꝑ remainder will graūt his remainder to another in fee by his dede, & ꝑ tenāt for terme of life attourneth, this is no discontinuance of the remainder.

¶ Also if a man bee tenaunt in the tayle of aduowson in grosse or of cōmon in grosse, if he

by hys

by his aduowson in grosse or of common in grosse, if he by his dede will graunt ꝑ aduowsō or the cōmon to another in fee, this is no discontinuance for in such case the grauntee hath no estate but for terme of the tenant in ꝑ tayle ꝑ made this graunt &c. ¶ Note well that such things as passe by way of graūt made by dede, & not by act in the countrey &c. Such graunt maketh no discontinuance as in the case aforesaid, & other like cases &c. ¶ Any howbeit that such thigs be grāted in fee, by fine leuied in ꝑ kings court &c. yet they make no discontinuāce &c.

¶ Also if a man bee seised in taile of landes deuisable by testament &c. & he deuiseth ye to another in fee, and dyeth, & the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of the tenāt in the taile &c.

¶ Also if an abbot haue a reuersion or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, & the tenant attorneth &c. this is no discontinuance. In ꝑ same maner it is where an Abbot is seised of an aduowson or of such things that passe by way of graūte without liuery of seisin &c.

¶ Also if there bee graundfather, tenaunt in the tayle, father and sonne, and the graundfather is disseised by the father, and the father maketh a feoffement in fee without warrantise and dyeth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee for

vpon &c

for this that this was no discontinuance, in so much ꝑ the father was not seised by force of ꝑ tayle at the time of the feoffemente &c. but was seised in fee by disseisin made to ꝑ grandfather.

¶ Also if a woman inherite haue an husband within age, which maketh a feoffement of the tenements of the wife and dyeth, it hath beene questioned if the wife may enter or not. And it semeth to some men that the entre of the wife after the death of her husband shalbe lawfull in thys case, for when her husband made such a feoffement &c. he might wel enter notwithstanding such feffement during the couerture, & he might not enter in his own right but in the right of his wife &c. Ergo such right ꝑ he had to enter in the right of his wife &c. that right of entre abideth to the wife &c. after hys decease, and it hath ben said that if two ioyntenants being within age made a feffement in fee & one of the children dieth, & the other survyueth, in so much that both children myght enter ioyntlye in their lyues, thys ryght of entre groweth al to him that survyueth, & so he may enter into the whole &c.

¶ Also the heire of the husband that made ꝑ feffement within age may not enter, for thys ꝑ no right discendeth to such an heire in the case aforesaid, for this that the husband had neuer anything but in ꝑ right of his wife. And also when a chylde maketh a feoffement beynge within age, this shal neuer greeue nor hurt him but ꝑ he may wel enter &c. And thus shoulde

be

be against reason that such a feoffement made by him that was not able to make such a feoffement shal grieue or hurt other to toll other of their entries &c. And for these causes it seemeth to soe that after ỹ death of such an husbād so being within age at the time of the feoffement &c. that his wife may well enter &c.

¶ Also if a womā enheritrice taketh an husband and hath issue a sone & the husbād dieth, & she taketh another husband, and that second husband letteth ỹ land that he hath in ỹ ryght of his wife to another for terme of his life, and after the wife dieth, & after the tenāt for terme of life surrendreth his estate to the secōd husband &c. Enquire if the sonne of the wife may enter or not in this case vpō ỹ second husbād during the lyfe of the tenaunt for terme of life. But it is clere i we in this case that after the death of the tenant for terme of life, the sonne of the wyfe may well enter, for this ỹ the discontinuance that was made alonely for terme of his life is determined &c. by the death of the same tenant for terme of life &c.

¶ Also if the persō or vicar of a church alien certaine landes or tenementes parcell of hys glebe &c. to another in fee & dyeth, or resigneth &c. his successour may well enter, notwithstāding such alienation, as it is saied in a Nota Anno 2. H. 4. Termino Mich. quod sic incipit, Nota quod dictum fuit p lege. In a writ of Accompt brought by the maister of the college, ỹ if a psō or a vicar graūt certaine lāds

that

that is of the right of his church to another & dieth or chaungeth, that his successor may ēter: And I trow ꝑ cause is for this. ꝑ the plō or vycar ꝑ is seised &c. in right of the church hath no right of ꝑ fee simple in the tenemēts, & ꝑ right of the fee simple thereof abydeth in any other person. And for this cause his successour may wel enter, notwithstanding such alienatiō &c. for a Bishop may have a writ of right of tenits of right of his Bishoprick for this ꝑ the right of fee siple abideth in him & in his chapiter, & a Deane may have a writ of right &c. for this ꝑ the right abydeth in him & his chapiter, and an Abbot may have a writ of right, for this that the right abydeth in him & in his couent, & sic de aliis casibus consimilibus &c. But a plō or a vicar may not have a writ of right &c. but ꝑ highest writ ꝑ they may have, is a writ De Juris utrum, the which is a great proofe that the right of fee simple is in abeiance, that is to say, al only in the remembrance, entendement and consideration of the law, for mee seemeth that such a thing in such a right that is said in diuers bookes to be in abeyance is as much to say in latin ℌ. talis res vel tale rectum que vel quod non est in homine adtunc superstite, sed tantummodo est & consistit in consideratione & intelligentia legis &c. & quidā alij dicerunt talem rē aut tale rectū fore in nubib⁹ &c. But I suppose ꝑ they understād by these wordes in nubibus &c. as I have said before.

¶ Also if a parson of a Church die, notwithstanding the frank-

franktenement of the glebe of the personage is in no man during the time ꝑ the personage is dead, but is in abeyance, ꝑ is to say, in consideration & intelligence of ꝑ lawe, till another be made ꝑson of the same Church, & immediately when another is ꝑson the franktenement in deede is to him as successour.

Also some men peraduenture will argue & say, ꝑ in so much ꝑ the parson wt thassent of ꝑ patron & Ordinary, may grant a rent charge out of the glebe of his personage in fee, and so charge the glebe of the personage perpetually, Ergo they haue fee simple, or elles or one of the hath fee simple at ꝑ least &c. To this it may be answered, ꝑ it is a principle in lawe, that of euery land there is a fee simple in some man, or elles the fee simple is in abeyaunce &c. And another principle is, ꝑ euery land of fee simple &c. may bee charged with a rent charge in fee, by one way or by another &c. and when such rent is graunted by the dede of the person the patron and the Ordinarie in fee, none shall haue preiudice nor losse by force of suche graunt. But the graunters in their liues, & the heirs of the patron, and successour of the Ordinary after their decease, and after such charge ꝑ the person die, his successour may not come to the sayd Church to bee parson of the same churche by the lawe, but by presentment of the patron and admission and institution of the Ordinary &c. And for this cause it behoueth that the successour hold him content

and

and agreed with that which his patrō & Ordinary lawfully haue dōe before. But ẏ cause ẏ such rent charge is gone for this, is ẏ they which had entries in the said church, that is to say, the patron after the law temporall, & the Ordinary after the law spirituall, were assenten as parties vnto such a charge &c. and thys semeth the very cause ẏ such glebe may be charged in perpetuitie &c.

¶ Also if a Bishop alien lands which beene parcel of his bishopricke, & dieth, this is a discōtinuance to his successor, for this, that he may not enter, but is put to his writ De ingressu sine assensu Capituli &c.

¶ Also if a Deane alien land parcel of hys Deanry & dieth, his successor may not enter, but he may haue a writ De ingressu sine assēsu Episcopi & capituli &c.

But if the Deane & ẏ Chapiter haue lād to thē & to their successors in common &c. howbeit ẏ the Deane alien such lands, his successours may wel enter, for this that the franktenemēt at the time of the alienation, was as wel ī ẏ Chapitē as in the Dean. But where the Deane is sole seysed as in ryght of hys Deanry, then such alienation is discōtinuāce to his successour, as it is aforesaid. Also some men wil argue and say, that if an Abbot & his couent bee seised in their demeane as of fee, of certaine land to them and to their successours &c. and the Abbot without ẏ assent of his couent alieneth the same lands vnto another,

and

& dyeth, this is a discontinuance to his successours &c. & by the same they will say, ꝑ where a Deane & a Chapiter be seised of certein land to thē or to their successours, if the Deane alien the same lāds &c. this shalbe a discōtinuance to his successours. So ꝑ his successors may not enter &c. To this may be answered, ꝑ there is a great diuersitie betweene the said two cases, for whē an Abbot & the couent be seised &c. yet if they be dilleised, the Abbot shall haue assise in his owne name without the naming of his couent &c. And if a man may or will sue a Writ cipe quod reddat of the same landes whē they be in the hands of the Abbot and hys couent, it behoueth that such an action be sued against the Abbot onlie without naming of the couēt &c. for this, that al they be dead persons in the law, saue only the Abbot ꝑ is souerayngne &c. & this is cause of the souraintie &c. for els hee should be as one of ꝑ other monkes of the couent &c. But the Deane & the Chapiter be no dead persons in the law &c. For eche of them may haue an actiō by him self in diuers cases, and of such landes or tenementes whych the Deane and Chapiter haue in common &c. yf they be dilleysed, that the Deane & the Chapiter shall haue assise, & not the Deane alone, & if another will haue an actiō real of such landz or tenemēts against the Deane &c. it behoueth hym to sue against the Deane and Chapiter, & not against the Deane alone &c. & so appeareth great diuersitie betweene these two cases.

¶ Also

¶ Also if the master of an hospitall discontinue certein lād of his hospital, his successors may not enter, but hee is put vnto his writ De ingressu sine assensu contratrū & successorum suarum, & al such writs do plainly appeare in the Register &c.

¶ Remitter.

REmitter is an auncient tearme in the lawe, and it is where a man hath two tytles to landes or tenements, that is to say, of an elder tytle, and an other of the latter tytle, and hee commeth to the land by the latter title, yet the lawe adiudgeth him to bee in the force of the elder title, for this that the elder title is the more sure tytle, and the more worthy tytle, and then when a man is iudged in by force of the more elder tytle, this is vnto him said a Remitter, for this is the lawe shall admit him to bee in the land by the elder tytle, as if the tenaunt in the taile discontinue the taile, and after he disclaymeth his discontinue, and so dyeth seised, whereby the tenementes discend to his issue, as to his cosin inheritable by force of the taile, in this case this is to him whom the tenementes dyscende whych hath ryght by force of the tayle a Remitter in the tayle taken, for that, that the lawe shall put and adiudge him to be in by force of the tayle, which is his elder tytle, for if hee shall be in by force of dyscent, then the discontinue may haue a writ of Entre vppon the disclaym in the per against him, and recouer the tenementes, and

his dāmages, but in so much that he is inl by force of the taile, ỹ title & the interest of ỹ discontinue, is al vtterly admitted & defeated &c.

¶ Also if tenant in the taile infeoffe in fee his sonne or his cosin inheritable by force of the tayle, the whych sonne or cosin at the tyme of ỹ feoffemēt is within age, and after the tenant in the taile dyeth, and hee to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made. ¶ Or howbeit that during the life of the tenāt in the taile that made the feoffemēt, such heire shalbe adiudged by force of the feoffement, yet after the death of the tenaunt in the taile, the heire shalbee adiudged in by force of the taile &c. & not by force of the feoffement, and though that such an heire was of full age at the time of the death of the tenaunt in the tayle that made the feoffement, thys maketh no matter if the heire were within age at the tyme of the feoffement made to hym, and yf such an heire beyng within age at the tyme of the feoffement commeth to full age ipuing the tenaunt that made the feoffement, and so beeing of full age, hee chargeth by his deede, the same lande with a common of pasture, or with a rent charge, and after the tenaunt in the taile dyeth: ¶ Nowe it seemeth that the land is discharged of ỹ cōmon, & of the rent, because the heire is in by an other estate in ỹ land, then he was at the tyme of the charge made, in so

much

much ꝑ he is i his remitter by force of ꝑ taile, and to the estate that he had at the time of the charge is vtterly defeated &c.

¶ Also a principal cause wlyy such an heire in the cases aforesaid, and other cases semblable shalbe said in his remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against hym selfe he may not sue, & he may not sue against none other, for none other is tenāt in ꝑ franktenement, & for that cause the lawe adiudged him in his remitter, ꝑ is to say, in such plight as he had lawfully recouered the same land against another.

¶ Also if land be tayled to a man and hys wife, and to the heirez of their two bodies engendred, the which haue issue a daughter, and the wyfe dyeth, and the husband taketh an other, and hath yssue an other daughter, & dyscontinueth the taile, and after he disseiseth the discontinuee, and so dyeth seised, now the land descendeth to the two daughters, in thys case as to the elder daughter that is inheritable, this is a Remitter but of the halfe, and as to the other halfe, she is put to her actiō of Formedon against her sister, for in thys case two sisters bee not tenaunts in parcenary, but bee tenants in common, for thys ꝑ they bee in by dyuers titles, for the one sister is in her remitter by force of the taile, as to that ꝑ vnto her belongeth, And the other sister is in as to that, that belongeth to her in fee simple by the

discent of her father. In the same maner it is if the tenaunt in the tayle enfeoffe hys heire apparaunt in the tayle being the heire within age, and an other ioint tenaunt in fee, & the tenaunt in the taile dieth. Now the heire in the taile is in his remitter as to ꝑ halfe, & as to ꝑ other half he is put to his writ of formedon &c.

¶ Also if tenant in the taile enfeoffe his heire apparant, ꝑ heire being of full age at time of ꝑ feoffement & after the tenãt in tayle dieth, this is no remitter to ꝑ heire, for this that it was his owne folly, that hee being of full age would take such feoffement &c. But such folly may not be adiudged in the heire being within age at the time of the feoffement &c.

¶ Also if tenaunt in the tayle enfeoffe a woman in fee, and dyeth, and hys issue within age taketh the woman to wife, this is a remitter to the childe, and the wife the hath nothing, for this that the husband and the wyfe been but one person in the lawe. And in that case the husband may not sue a writ of Formedon, but after hee will sue against him selfe, the which shalbee inconuenient, and for that the lawe iudgeth the heire in his remytter, for this that no folly may be aretted to him being within age at the time of the spousayles &c. And if the heire be in his remitter by force of the tayle, it foloweth by reason that the wife hath nothing &c. for in so much that the husband and the wife bee but one person. the lande may not bee seuered by halfes, and for such cause the husband is in his remitter of

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the whole. But otherwise it is, if such an heire bee of full age at the tyme of the ipoultaties, then the heire hath nothing but in the right of his wife.

¶ Also if a woman seised of certein lande in fee, taketh an husbande, the which alieneth ȳ same lande to an other in fee, and the alyene letteth the same lande to the husbande and the wife for terme of their two lifes, saiunge the reuersion to the lessour, and to the heire, in this case the wife is in her remytter, and shee is seysed in deede in her demeane as in fee, as shee was before, for this that the takynge of estate shalbee adiudged in the law the deede of the husbande, and not the deede of the wife, so that no folly may bee iudged in the wife that is couert in such case. And in this case the lessour hath nothing in the reuersiō for this that the wife is seised in fee. But in this case if the lessour will sue an action of wast agaynst the husbande and his wife, for thys that the husband hath made wast, the husbande may not barre the lessour for to shewe this that the takyng of estate made vnto him and to his wife made a Remitter to his wife, for this that the husbād is stopped to say this against his feoffement and one reprisell of estate for terme of lyfe to him and hys wife, and yet the lessour hath no reuersion, for this that the fee simple is in the wife, so a man may see a matter in thys case that a man shalbe estopped by a matter in deede, though no writinge by deede indented

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ted or otherwise be therof made. But yf in an action of waſt the huſband make defaulte at the grounde diſtreſſe, and the wyfe prayeth to bee receyued, and is receiued, ſhee ſhall well ſhewe al the matter, and howe ſhe is in her remitter, and ſhall barre the leſſour of hys action. For in euery caſe that the wyfe is receiued for default of her huſband, ſhee ſhall plede and haue the ſame aduauntage in pleading as ſhe were a woman ſole. And howbeit ỹ the alienee made no leaſe to the huſbande and his wife by deede endented, yet thys is a remitter to the wife, and though the alienee yelded the ſame lande to the huſbande and hys wyfe by fyne for terme of their lyues, yet this is a remitter to the wyfe, for thys that the wyfe couert ỹ taketh eſtate by fyne ſhall not be examined by the Iuſtices. And here note wel that when any thing ſhal paſſe from the wyfe that is couert of huſbande by force of a fyne the huſband & his conuſaunce of right to an other &c. or make a graunt to yeld to another, or releaſe by a fine to another. Et ſic de ſimilibus, where the right of the wyfe paſſeth from the wife by force of the ſame, the wife in all ſuch caſes ſhalbee examined before ỹ the fine be excepted. And ſuch fines conclude ſuch wifes couert for euer. But where nothing is moued in the fine, but al only that the huſbande and the wife take eſtate by force of the ſame fine, thys ſhal cõclude the wife for this that in ſuch caſe ſhe ſhal neuer be examined.

¶ Alſo

¶ Also if tenant in the taile discontinue the tayle & hath a daughter & dieth, & the daughter being of full age taketh an husbande, & the discontinue maketh a lease of tyus to the husband & his wife for terme of their lyues, thys is a remitter in deede of the wife, & the wyfe is in by force of the tayle, causa qua supra.

¶ Also if land be geuen to the husband & hys wife, to haue and to holde to them, and to the heires of their two bodies begotten, and after the husband alieneth the land in fee, & taketh againe an estate to him & to his wife for term of their two lines: In this case this is a Remitter in deede to the husbande and the wyfe mauger the husband, it may not bee a remitter to ꝑ wife, except it be a remitter to the husbād for this that the husbande & his wife bee but one person in the law, though ꝑ the husbande is stopped to claime this to bee a Remitter in him against his alienation & his owne repriſel as it is afore laid.

¶ Also if land bee geuen to a woman in the tayle, the remainder to an other in the taile, the remaynder to the thirde in the tayle, the remaynder to the foweerth in fee, and the wyfe taketh an husbande and the husband discontinueth the lande of the wife, by thys discontynuaunce, al the remaynders bee discontinued, for yf the wyfe dye wythout iſſue, they in the remaynder shall haue no remedy, but to sue their writes of Formedon in the Remainder when they come to their tyme &c. But yf after such discontinuaunce, estate bee made to

the husbande and his wyfe for terme of their two lyues, or for terme of an others life, or an other estate &c. for this, that this is a Remytter to the wife, this is a Remuter to all those in the remaynder &c. For after this that the wife that is in her Remytter dyeth without yssue, they in the remaynder may enter &c. without any action or suit &c. In the same manner it is of them which haue ỹ reuersiõ after such tayle &c.

¶ Also if a man let a house to a woman for terme of her life, sauinge the reuersion to the lessour, and after one sueth a fayne and false action agaynst the woman, and recouereth the house against her by default, so that the woman may haue against hym a writ Quod ei deforciat, after the Statute of Westm. the second Cap. iiij. nowe is the reuersion of the lessour discontinued, so that hee may haue no action of wast. But in this case if the woman take an husband, and hee that recouereth letteth the house to the husband and his wyfe for terme of their two lyues the wife is in her remitter by force of the first lease. And yf the husbande and the wyfe make wast, the first lessour shal haue against him a writ of wast for this, that in so much that the wife ys in her remitter, hee is remitted to hys reuersion. But it seemeth in thys case if he that here cõmeth by the false actyon, wyll bringe an other writ of wast agaynst the husbande and hys wyfe, the husbande hath no remedy agaynst hym, but to make default at the great distresse

&c.

&c. And to cause the wife to bee discouered and to plede ꝑ matter against the second lessour, & to swere that the action by which hee recouered was false & fayned in the law, & so ꝑ wife may barre &c.

¶ Also if the husbande discontynue the lande of hys wyfe, & after taketh estate to hym & to his wife, & to the third man for terme of their lyues, or in fee, this is a Remitter to ꝑ woma but as to the moity. And as for the other moity it behoueth her after ꝑ death of her husbād to sue a Cui in vita.

¶ Also if the husband discontinue the land of his wife, and goe ouer the sea, and the discontinue let the same land to ꝑ woman for terme of lyfe, and deliuer to her seisin, and after the husband commeth and agreeth to that liuery of seysin, this is a Remytter to the woman, & yet if the woman had bene sole at that tyme of her lease made to her, this should be to her a Remitter, but in so much as she was couert baron at ꝑ tyme of the lease, and the liuery of seisin made to her, though that shee onely take the liuery of seisin, this was a Remitter to her, because a woman couert shalbee adiudged as an infaunt within age in such case &c. Enquire in this case, if the husbande when hee commeth agayne will disagree to ꝑ lease and liuery of seysin made to his wife in his absence. if this shal put the woman from her Remitter.

¶ Also if the husbande discontinue the tenementes of hys wife, and the discontinuee is dys-

disseised, & after the disseisor letteth the said tenements to the husbande & his wife for terme of life, this is a remitter to the wife, but if the husband & the wife were of coun or consent ꝑ ꝑ disseisin should be made, then it is no remitter to the wife, because shee is a disseisouresse. But if the husband were of coun & consent to the disseisin, & not ꝑ wife, then such lease made to the wife is a remitter, because ꝑ no default was in the wife.

¶ Also if such a discontinue had made estate of free hold to the husband and the wife made by endenture vppon condition, s. reseruinge to the discontinue a certein rent, and for default of payment a reentry, & because that the rent is behynde. the discontinue entreth, of this rēt the woman shal haue assise of Nouel disseisin after the death of her husbande agaynst the discontinue, because that the condition was wholly annulled, in so much as ꝑ womā was in her remitter, yet the husband with his wife could not haue assise because the husbande ys stopped.

¶ Also if the husband discontinue the tenements of his wife, and taketh estate agayns for terme of hys lyfe, the remaynder after hys decesse to his wife for terme of her lyfe, in this case this is no remitter to the wyfe durynge the lyfe of her husbande, because that durynge the lyfe of the husband, the wife hath nothinge in the free hold, but if in this case the wife outlyue the husbande, this is a remitter

to

to the wife because that a free holde in lawe is fallen vppon her mauger her wil, & in so much that shee can haue no actyon agaynst none other person, & agaynst her selfe she can haue no action, therefore shee is in her remitter. For in this case though that the woman enter not in the tenementes, yet a straunger that hath cause to haue action may sue his actiō against the woman of the same tenements because she is tenaunt in lawe, though shee be not tenaunt in dede, for tenaunt of frankstenement in deede is hee, that if hee bee disseised of frankstenemēt may haue assise, but the tenant in the lawe before his entre shall haue no assise, and if a man seised in fee of certeine lande hath issue a sonne which taketh a wife, and the father dieth seysed, and after the sonne dyeth before any entre made by him into the land, ꝑ wife of the sonne shalbe endowed in the land, and yet he had no frankstenement in the deede, but he had a fee & a frankstenement in lawe, & to note wel ꝑ a rente cure or reddat may as well be maintayned against hī ꝑ hath ꝑ frāksteneṁt i lawe, as against hym ꝑ hath frankstenemēt in dede.

¶ Also if a tenant in the tayle haue issue two sonnes of full age, and hee letteth the tayled lande to the elder sonne for terme of hys lyfe, the remaynder to the yonger sonne for terme of hys life, and after the tenant in the tayle dyeth: In this case the elder sone is not in his remitter because he toke estate of his father, but if ꝑ elder sonne dye sā out issue of his body, thē

this

this is remitter to the ponger brother because hee is heire in the taile, & a franketenement in law is fallen vpon him by force of the remainder, & there is none against whom he may sue his action &c. In the same maner it is where a man is disseised & the disseisor dyeth thereof seised, & the tenements discende to his heire, & the heire of the disseisour maketh a lease to a man of the said tenemẽts for terme of life the remainder to ỹ disseisour for terme of life or in taile or in fee, & the tenãt for terme of life dieth Now this is a remitter to ỹ disseisee &c. Causa qua supra.

¶ Also if tenant in the taile enfeffe his sonne and an other of the tailed lande in fee, and liuery of seisin is made to the other accordinge to the deede, the sonne not knowinge thereof, nor agreeyng to the feoffement, and after hee that tooke the liuery of seysin dyeth, and the sonne occupyeth not the lande nor taketh any profite of the lande during the lyfe of hys father, and after the father dyeth, now hys is a remitter to the sonne, because the freholde ys fallen vpon hym by the surrauour and no default was i him, because he neuer agreed &c. in the lyfe of hys father, and there is none against whom he may pursue his writ of Formedon &c. For if a man bee disseised of certein lande, and the disseisour maketh a deede of feoffement, whereof he enfeoffeth B. C. and D. And the liuery of seisin is made to B. and C. but D. was not at the liuery of seisin nor neuer

ter agreed to the feoffement nor neuer would take the profits &c. And after B. & C. die, & D. ouerlyueth them, and the dulleyly hangeth his writ, sur disseisin in the Per, against the same D. he shal shew al ꝑ matter & how ꝑ he neuer agreed to the feoffement, and so he shall discharge him seisi of dammages so that the demandãt shall recouer no dãmage against hi though that he bee tenaunt of franketenement of the lãd. And yet the statut of Glocester wil that the dissei sy shall recouer dammages on a writ of entre grounded vpon the nouel disseisin against him that is founde tenaunt. And this is a proofe in ꝑ other case that in so much as the issue in the taile cõmeth to the franketenement not by his dede nor by his agreement but after the death of his father, this is a Remitter to him, in so much that he cã sue an action of formedon against none other person.

¶ Also if an Abbot alien the lande of hys house to an other in fee, and the alienee by his deede chargeth the lande with a rent charge in fee, and after the aliene enfeoffeth ꝑ Abbot by licence, to haue and to holde to the Abbot and his successours for euer, & after the Abbot dyeth, and another is chosen & made Abbot: In this case the Abbot that is the successour, and hys conent be in their remitter, and shall hold the land discharged, because that the same abbot cannot haue any action of this writ of entre Sine assēsu capituli of ꝑ same lãds against none other person. In the same maner it is

where

Where a Bysshop or Deane or other such per-
sons alyen &c. without assent &c. And after
the Bysshop taketh estate agayne of the layd
lande by lycence to hym, and to his succes-
sours, and after the Bysshop dyeth, his suc-
cessor is in his remitter as in the right of hys
Church, and shall dedcate the charge &c. Cau-
sa qua supra.

¶ Also if a man sue a false action agaynst
tenaunt in the taile, as if a manne will sue a-
gainst him a writ of Entre in ỹ post, suppo-
sing by his writ that the tenaunt in the tayle
had not his entre but by A. of B. that disseised
the graundfather of the demaundant. and that
is false, and he recouereth against the tenaunt
in the taile by default, and sueth execution, and
after ỹ tenant in the taile dyeth, his issue may
haue a writ of Formedō against him that re-
couered, and if hee will plede the recouerie a-
gaynst the tenaunt in the taile, the yssue may
say that the sayde A. of B. disseysed not the
graundfather of hym that recouered in the
manner as hys writ supposeth, and so he shall
falsify hys recouerie. Also suppose that that
was true that the sayde A. of B. disseised the
graundfather of the demaundaunt that reco-
uered, and ỹ after the disseisin the demaundant
or his father, or his graundfather, by a dede
had released to the tenaunt in the tayle all the
ryght ỹ he had in the land &c. And thys not-
withstanding he sueth his writ of entre in the
post against the tenant in ỹ taile in the maner

as

as is aforesaide, and the tenaunt in the taile pleadeth to him. ℣ the sayde A. of B. disseysed not his grādfather as his writ supposeth, and vppon this they bee at issue, and the issue is found for the demaundant, wherevnto he hath judgement to recouer, and sueth execution, and after the tenant in the taile dieth, his issu may haue a writ of Formedon agaynst hym that recouered. And if hee will plede the recouerie by act pon tryed agaynst his father tenaunt in the taile, then he may shewe and plede the release made to his father, and so the action that was sued was sayne in the lawe &c. And yt seemeth that saint action is as much to say in English tayned action, that is to say, suche action that though the wordes of hys writ bee true, yet for certayne causes hee hath no cause nor title by the lawe to recouer by ℣ same action. And saise action is, where the wordes of the writ bee saise, and in the two cases beforesayde if the case were such that after such a recouerie, and execution thereof made, the tenaunt in the tayle had disseised him that recouered and thereof dyed seysed, wherevnto the lande also discended vnto his issue, thys ys a Remitter to the yssue, and the issue is in by force of the tayle, and for that cause I haue put these twoe cases beforesayde, to entourme thee my sonne, that issue in the taile by force of a dyscent made to hym after a recouerie and execution thereof made agaynst his auncestor, may bee as well in his remitter

as

as hee ſhould bee by diſcent made to him after a diſcontinuance made by his auncelter of the tayled lande by feoffement in the countrey or otherwiſe.

¶ Alſo in the ſame caſe aforeſaid, if the caſe were ſuch that after the demaundāt had iudgement to recouer againſt the tenaunt in taile, and the ſame tenant in the taile dyed before any execuciō had againſt him whereby the tenements diſcendō to his iſſue, and hee that recouered ſued a Scire facias to haue execution of the iudgemēt againſt the iſſue in the taile, the iſſue ſhall plede the matter as before is ſaid, & ſo ſhall proue that the recouerie was falſe or faint in the lawe, & ſo ſhall barre him to haue execution of the iudgement &c.

¶ Alſo if tenant in the tayle diſcontinue the taile and die and hys iſſue bryngeth a writte of Formedon againſt the diſcontinue being tenaunt of the free holde of the lande, and the diſcontinue pleadeth that he is not tenant but otherwiſe diſclaymeth fro the tenauncy in the lande, in this caſe the iudgement ſhalbee that the tenaunt go wythout day, and after ſuch iudgement the iſſue in the taile that is demāndaunt may well entre in the lande notwythſtanding the diſcontinuaunce. And by ſuch entre he ſhalbe adiudged in his Remitter, and the cauſe is, becauſe that if anie man ſue a Precipe quod reddat againſt anie tenaunt of free holde, in wheych action the demaundaunt ſhall not recouer dammages, and the tenaunt pleadeth not non tenure, but otherwiſe diſclaimeth

meth in the tenancy, ꝑ demaundaunt may not auerre in the writ ꝑ hee is tenant as the writ suppoſeth. And for that cauſe the demandāt after that, ꝑ iudgement is geeuen that the tenaunt ſhall goe without day, may enter into the teneements demaundꝛd, the which ſhal dee as great aduauntage to hint in this lawe, as if hee had iudgement to recouer agaynſt the tenaunt. And by ſuch entre he is in the remitter by force of the caule. but where the demaūdant recouereth dāmages agaunſt the tenaunt, there the demandant may auerre that he is tenaunt as the writ ſuppoſeth, & that for the aduauntage of the demaundant for to recouer his dāmages, or els he ſhal not receiue his dāmages the which dāmages be or were geuen hym by the lawe.

¶ Alſo, if a man be diſſeiſed, and the diſſeyſour die his heire being in by diſcent. now the entre of the diſſeiſe is taken away. And yf the diſſeiſy bring his writ of entre vppon the diſſeiſin in the Per against the heire, & the heire diſclaymeth in the tenancy &c. the demaūdant may auerre his writ that he is tenant as the writ ſuppoſeth if he will, for to recouer his dāmages. But yet if he will leaue the auerrement &c. he may lawfully enter into the lād, becauſe of the diſclaimer, notwithſtanding ꝑ hys entre before was take away. And that was adiudged before my maſter ſir Robert Danby late chiefe Iuſtice of the common place, and hys Compaignions.

R.ſ. ¶ Alſo

¶ Also where the entre of a man is lawfull though ỹ he take estate to hī whē he is of full age for terme of life, or in taile or in fee, this is a remitter to him if such takig of estate be not by dede indented, or by matter of record ỹ shall conclude or stop him. For if a man be disseised & thereof taketh estate of the disseisor without dede or by dede poll, ỹ is a good remitter to the disseisy.

¶ Also, if a mā let lād for time of life to another which alieneth to another in fee, & ỹ alienor maketh estate to the lessor, this is a remitter to the lessor because his entre was lawful.

¶ Also, if a man be disseised, and the disseisor letteth the land to the disseisy by dede poll or without dede for terme of yeares, whereby ỹ disseisy entreth, this entre is a remitter to the disseisy. For in such case where the entre of a manne is lawfull, and a lease is made to hym though that he claime by wordes in the countrey that he hath estate by force of such lease, or sayeth openly that hes claimeth nothing in the land, but by force of such lease, yet thys ys a remitter to him, for such clayme in the countrey is nothing to purpose, but if he clayme in a court of Record that hee hath estate but by force of such lease & not otherwise, then hee is concluded &c.

¶ Also, if two toyntenauntes seysed of certein land in fee, the one beeing of full age, the other within age bee disseised, & the disseisour dieth seised and his issue entreth, the one of the toynte-

iointenaunts being then within age, & after ꝑ he commeth to ful age, the heire of the disseisor letteth ꝑ land to the same iointesit for time of their liues, this is a remitter as to the halfe to him ꝑ was vnder age because ꝑ hee is seised of ꝑ moity that belongeth to him in fee, because his entre was lawful. But the other iointesit hath in the other halfe but estate for terme of life by force of the lease because his entre was taken away &c.

¶ Warrantie.

IT is commonly said that there be three maner of warranties, that is to say, warrantie lineall, warrantie collaterall, and warrantie that beginneth by disseisin. And it is to wete that before the statut of Glouceſter al warrãties which descended to thẽ which were heires to them that made the warranty were barres to the same heires to demaũd any lands or tenements against those warranties except the warranties that began by disseysin for such warrantie was neuer barre to ꝑ heire because the warrantie began by wrong that is to say, by disseisin.

¶ Warrantie that beginneth by disseisin is in such forme. As where there is father & sonne, & the sonne doth purchase land &c. and letteth the same land to his father for terme of yeres & the father by his dede therof enfeoffeth another in fee, and bindeth him and his heires to

warranty, & if the father die whereby ꝯ warrantie descended to his sonne, this warrantie shal not barre the sonne, for notwithstãding this warranty the sonne may well enter in the lãd or haue an assise against the alienee if he wil because ꝯ warranty began by disseisin. For whẽ ꝯ father ꝯ had no estate but for terme of yeres made a feoffement in fee, this was a disseisin to ꝯ sonne of ꝯ franketenemẽt ꝯ then was in the sonne. In the same maner it is if the sonne let vnto the father ꝯ land to hold at will & after ꝯ father maketh a feoffemẽt with warrãty &c. And as it is said of ꝯ father so may it be layd of euery other auncestor &c.

¶ In the same mañ it is if tenãt by Elegit, tenãt by statut marchant, or tenant by statute staple, make a feoffemẽt in fee wt warranty &c. this shall not barre the heire ꝯ ought to haue ꝯ land because that such warranties beginne by disseisin.

¶ Also if a wardẽ in chiualry or warden in socage make a feoffemẽt in fee, in fee taile, or for terme of life wt warranty &c. Such warrãties be no barres to ꝯ heires to whõ the land shall discend because that they begin by disseisin.

¶ Also if the father & the sonne purchase certaine lands or tenementes, to haue and to hold to them iointly &c. & after the father alyeneth the whole to another and bindeth him & his heires to warranty &c. and after the father dieth, this warrantie shal not barre ꝯ sonne of the moity that belõged to him of the same tenements

nements.because that as to the moity that bee longed to the sonne the warrãty began by dis-seysin.

¶ Also if A.of B.be seised of a mese & F.of G.ꝑ hath no right to ẽter in ꝑ sãe mese clai-mig to hold ꝑ sãe mese to him & to his heirs, enter into the sãe mese, but A.of B.thẽ is cõ tinually dwellig in ꝑ same mese, in this case the possession of ꝑ frankstenemẽt shalbe alway adiudged in A.of B.& not in F.of.G.because ꝑ in such case where two be in one mese, or in other tenemẽts,& ꝑ one claimeth by one tytle, & the other by another title.the lawe shall ad-iudge him in possession that hath right to haue the possessiõ of the same tenement.But in the case aforesaid if F.of G.make a feoffement to certain barretours & extortioners in the coun-trey for to haue maintenaunce of them of the same mese by a dede of feffement & warrant, by force of which ꝑ said A.of B.dare not dwel in the same mese,but goeth out of ꝑ same mese this warrantie beginneth by disseisin,because that such a feoffement was cause that the said A.of B.left the possession of the same mese.

¶ Also if a man that hath no right to entre in anothers tenementes,enter into the said te-nementes, and incontinent maketh a feoffe-ment to other persons by his dede with war-rantie,& deliuereth to them seysin, thys war-rantie beginneth by disseisin, because that the disseysin and the feoffement were made as it were at one tyme.And that this is lawe,ye

may ſee it in a plee An.xxx. Ed. iij. in a Writ of Formedon in the reuerſion.

¶ Warrantie lyneall is where a man ſeyſed of certaine lande in fee maketh a feffement by his dede to another, and byndeth him and hys heires to warranty, & hath iſſue & dieth, and ſ warranty diſcendeth to his iſſue, this is a lyneal warrãty. And the cauſe why this is a lineal warranty, is not becauſe ſ the warranty diſcendeth from the father to his heire, but the cauſe is becauſe that if no ſuch dede with warrantie had beene made by the father, then the right of the tenementes ſhoulde diſcend to the heire, and the heire ſhould conuey the deſcent from the father &c. For if there be father and ſonne, and the ſonne purchaſe tenementes in fee, and the father diſſeiſeth the ſonne thereof and alyeneth it to another in fee by hys deede, and by the ſame deede bindeth him and hys heires to warrant the ſame tenementes and ſo forthe, and the father dyeth, nowe is the ſonne barred to haue the ſayde tenementes, for hee may by no ſuit nor by any other meanes haue the ſayed tenements, becauſe of the ſayd warrantie. And that is a collaterall warrantye, and yet the warranty diſcendethe lineally from the father to the ſonne. But becauſe that if no ſuch deede with warrantye hadde bene made, the ſonne in no manner myght conuey the tytle that hee hath of the Tenementes from hys father to hym, in ſo much that his father had no eſtate nor ryght in the tene-

ments

ments, therfore such warrantie is called collaterall warrantie, In so much that he ꝑ made the warrãtie is collateral to the title of the tenements, & that is as much to say, that hee to whom warrantie discended, could not conuey the title that he had in the tenements by him that made the warranty, in this case if no such warranty had ben made.

¶ Also if there bee graundfather, father and sonne, & the graundfather is disseised in whose possession the father releaseth by his deede & warrantie &c. & dyeth, and after the graundfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineal warranty, because that if no such warrãtie had ben made, ꝑ hee might not haue conueyed the right of the tenementes to hym, nor shew how he is heire to the graundfather but by meanes of the father &c.

¶ Also if a manne haue issue three sonnes and ps disseysed, and the elder sonne releaseth to the disseisour by his deede with warrantye &c. & dieth without issue, and after this the father dyeth, this is a lineal warranty to ꝑ ponger sonne, because that though the elder sonne dyed in the lyfe of the father, yet by possibility it might bee that he might conuey to him the tytle of the land by his elder brother, if no such warrantie had bene made. For it myght bee that after the death of the father, the elder brother entred into the tenements & died without issue, and then the ponger sonne shall conuey

to him ꝯ title by his elder brother. But in this case if the ponger sonne release with warrantie to the disseisor & dieth wtout issue, this is a collaterall warrantie to the eldest sonne, by cause ꝯ of such lande as was to the other, the elder brother by no possibilitie might conuey to him the title by meane of ꝯ ponger brother.

¶ Also if tenaunt in the taile haue issue three sonnes and discontinue the taile in fee, and the myddel sonne releaseth by his dede to the discontinuee and bind him and his heirs to warrantise &c. and after the tenant in the tayle die and the middel dieth wythout issue, nowe is ꝯ elder sonne barred to haue any recouery by a writ of Formedon because that the warranty of the middel brother is collateral to him, in so much that he may by no maner conuey to him by force of the tayle any discent by the middle brother, & therfore it is a collaterall warrantie. But ꝯ in this case ꝯ elder brother dye wtout issue, nowe the ponger brother may well haue a Formedon in the discender & recouer ꝯ same land, because that the warrantie of the middel brother is lineal to the pongest brother because it may be that by possibilitie ꝯ middel brother may be seised by force of the tayle after the death of his elder brother, and then the pongest brother may conuey his title of discent by the middel brother &c.

¶ Also if tenaunt in the taile discontinue the taile & hath issue, and dye, and the vncle of the issue release to the discontinuee wt warrantye &

dye

dye without iſſue, this is a collaterall warrãtie to the iſſue in the taile, becauſe ỹ the warrantye diſcendeth vppon the iſſue, which cannot cõuey himſelfe to the taile by meane of his vncle.

¶ Alſo if tenaunt in the tayle hath iſſue two daughters & dye, & the elder daughter entreth into the whole, & thereof maketh a feffemẽt in fee with warrantie, & after the elder daughter dieth without iſſue, in this caſe ỹ yonger daughter is barred as to the moity, & as to the other halfe ſhe is not barred, for as to ỹ moity that belongeth to ỹ yonger daughter ſhe is barred becauſe that as to the moity that belongeth to her ſhe cannot conuey the diſcent by ỹ meanes of her elder ſiſter. And therfore as to that moity that is a collateral warranty, but as to the other moity which belõgeth to her elder ſiſter by the ſame elder ſiſter ỹ warrãty is no barre to the yonger ſiſter, becauſe that ſhe may conueigh her diſcent as to that moity that belõged to her elder by the ſame elder ſiſter. And ſo as to that moitie that belongeth to ỹ elder ſiſter the warranty as to that is lineal to ỹ yonger ſiſter.

¶ And note wel that as to him that demandeth fee ſimple by any of hys auncеſters, ſhee ſhalbe barred by lineal warrantye which diſcendeth vppon him, except it bee reſtrayned by ſome ſtatut, but he which demandeth fee taile by a writ of Formedon in the diſcender ſhall not be barred by lyneall warrantie, except hee

haue

haue ynough by diſcẽt in fee ſimple by ỹ ſame auncetter that made the warrantie, but a collateral warranty is barre to him ỹ demaundeth fee, & alſo to hym that demaundeth fee taile, without any other diſcent of fee ſimple, except in caſes that bee reſtrained by the ſtatut & other caſes for certein cauſes as ſhalbee ſayd hereafter.

¶ Alſo if land be geuen to a man and to hys heires of his body begotten, the which taketh a wife & haue iſſue a ſonne betwene them, and the husband diſcontinueth the taile in fee, and dyeth, & after the wife releaſeth to the diſcontinuee in fee with warranty and dyeth, and the warrãty diſcendeth to the ſonne, this is a collateral warranty. But if tenements be geuen to the husband & the wife, and to the heirs of their two bodies begotten which haue iſſue a ſonne, & the husband diſcontinueth the taile & dieth, & after the wife releaſeth with warrãty & dieth, this warranty is but a lineal warrantie to ỹ ſonne, for the ſonne ſhal not be barred in this caſe to ſue his writ of Formdõ, except he haue inough by diſcent in fee ſimple by his mother becauſe ỹ their iſſue in a writ of Formedon ought to conuey to him the ryght as heire to his father & to his mother of their two bodyes begotten by fourme of the gyft, And ſo in ſuch caſe the warranty of the father and the warrantie of the mother bee but as lineal warranties to the heire &c. And note well that in euery caſe where a man demaundeth

deth

deth tenementes in fee tayle by a writ of Formedon, if any of the issue in the tayle that had possession or that hath possession make a warranty &c. if he that sueth the writ of Formedon might by any possibility by matter that might be in dede conueyed to him by him that made the warrantie by the forme of the gift. This is a lineal warranty, and not collateral.

¶ Also yf a man haue issue three sonnes, and hee gyueth lande to hys eldest sonne, to haue and to hold to him & to the heires of hys body begotten, and for defaut of such issue the remainder to the middel sonne, to him, and to the heires of hys bodye begotten, and for defaute of such yssue the remaynder to the youngest sonne, and to hys heires of hys bodye begotten, in this case if the eldest sonne discontinue the tayle in fee and bynde hym, and his heires to warrantie, and dye without issue, thys is a collateral warrantie to the middle sonne, and hee shalbe barred to demaunde the same lande by force of the remainder, because that the remaynder is his title, and his eldest brother is collateral to the title which beginneth by force of the remainder.

¶ In the same maner it is if the middel sone had the same lande by force of the remainder, because that his eldest brother made no discontinuance, but died without issue of his body, and after the middel sonne maketh a discontynuance with warranty &c. and dyeth wythout

ont issue, this is a collateral warrantie to the youngest sõne, & also in this case if any of ꝑ said sonnes be disseysed, & the father that made the gift releasse to the disseysour al hys right &c. with warranty, this is a collateral warranty to that sonne vpon whõ the warrantie discended, causa qua supra. And so note wel ꝑ where a mã that is collateral to the title &c. releaseth with warranty, that is a collateral warrãty.

¶ Also if the father geeue lande to his elder sonne, to haue and to hold to him & to the heirs males of his body begotten, the remaynder to the seconde sonne &c. if the eldest brother alyen in fee with warranty &c. and hath issue female & dieth without issue male, this is not a collateral warrantie to the seconde sonne, nor shal not hurt him of his action by Formdon in the remainder because that the warrantie discendeth to the daughter of the eldest sõne, and not to the second sonne. For euery warranty that discendeth, discendeth to him that is heire vnto him which made the warranty by the common lawe &c.

¶ Also if lande be geuen to a man and to his heirs males of his body begotten, and for default of such issue the remaynder thereof to his heires females of his body begotten, and after the donee in the tayle maketh a feoffement in fee with warrantie accordinge, and hath issue a sonne & a daughter and dyeth, this warrantie is but a lyneall warrantie to the sonne, to demaunde by writ of Formdon in the dyscendre,

rendre. And it is but lyneal to the daughter to demaund the same land by writ of Formedon in the remainder, yf her brother die without heire male because that shee claymeth as heire female of the body of her father begottē. But in this case if her brother in his life release to the discontinue &c. with warranty &c. And after die without issue, this is a collateral warrantie to the daughter, because ꝑ she cānot cōuey to her the right ꝑ shee hath by force of the remainder by any meane of discent by her brother, & therfore the brother is collateral to the title of his sister, & therefore his warrantie is collateral &c.

¶ Also I have heard say that in ꝑ time of king Richard the second there was a Justice in the common place dwelling in Kent, called Rikhil, that had issue diuers sonnes. And hys entent was, that his eldest sonne should have certayne landes to hym and the heires of his bodie begotten, and for defaut of issue, the remainder to his second sonne and so forth. And so the thirde sonne &c. And because that he would that none of his sonnes should alien or make warranty for to barre or to hurt that other that should be in the remainder &c. He caused to be made an indenture to such effect, that is to say, ꝑ the lands and tenements were geuen to hys eldest sonne vppon thys condition, that if the eldest sonne alened in fee or in fee taile &c. or ante of hys sonnes alened &c. ꝑ then their estate should cease & should be

voide

boyde, and that then the sayde landes or tenementes immediatly should remaine to the second sonne & to the heires of his body begotten, and that vpō the same condition, s. that if the second sonne alien &c. that thē his estate should cease, and ꝑ then the same landes & tenemēts should remaine to the third sonne, & to the heires of his body begotten, and so forth, the remainder to other of his sonnes, & liuerie of seysin was made accordyng. But it seemeth by reason ꝑ al such remaīders in ꝑ forme beforesayd bee void, and of no value, and that for three causes. One cause is because euerie remainder that beginneth by a dede, it behoueth that the remainder be in him to whō the remainder is tayled by force of the same deede when the liuery of seisin is made to him that hath the franktenement.

And such remaynder was not to the second sonne at the time of liuery of seisin in the case beforesaid &c.

¶ The second cause is ꝑ the first sonne alien the tenementes in fee, then is the franktenement and the fee simple in the alienee and in none other, and if the donour had any reuersion by such alienatiō, the reuersion is discontinued, then though that by some reason it may bee that such remainder shall begynne his being and his growyng immediatly after such alyenation made to a straunger that hath by the same alyenation franktenement and fee symple, and also if such remaynder should

be

be good,then might he enter vppon the alienee where he had no maner of right before ỹ alienation,which should be inconuenēt. The thirde cause is when ỹ condition is such ỹ if ỹ eldest sone alien &c. ỹ his estate shal cease,or shalbee void &c.then after such alienation &c. may the donour entre by force of such cōditiō &c. as yt semeth,& so ỹ donour or his heires i such case ought more sooner to haue ỹ land,then ỹ secōd sonne ỹ had no right before such alienatiō &c. & so it semeth ỹ such remaīders in the case beforesaid be void.

¶ Also,at the common law before the statut of Glouceſter, yt tenaunt by the curteſie had aliened in fee with warranty accordaunt, after his decease this was a barre to ỹ heire &c. as it appeareth by the wordes of the same statute. But it is remedied by the same statut, that the warranty of the tenaunt by the curteſie shalbe no barē to the heire,except he haue ynough by diſcent by the tenant by the curteſie,for before the said estatute that was a collaterall warrauntie to the heire, because hee could not conuey ane title of dyscent to the tenements by the tenaunt by the curteſie, but onely by his mother or other of his auncesters &c.& that is the cause why it was collaterall warrauntie. But if a manne enherite take a wife, whych haue issue a sonne betweene them and the father dyeth, & the sonne entreth into the lande,and endoweth his mother,and after his mother alyeneth that that she hath in her

dower

dower to another in fee, with warrãty accor-ding, and after dyeth, and the warranty dis-cendeth to the ſonne, nowe the ſonne ſhall bee barred to demaunde the ſame lande becauſe of the ſaid warraunty, becauſe that ſuch collate-ral warranty of tenaunt in dower is not re-medied by any ſtatut. The ſame lawe is where tenant for terme of life maketh an alienation with warrantie &c. and dieth, and the warrã-tie diſcendeth to him that had the reuerſion or the remainder &c. they ſhalbee barred by ſuch warrantie &c.

¶ Alſo, in the ſayde caſe if it ſo were ꝑ when the tenaunt in dower alieneth &c. the heire was within age, and alſo at that time that the warranty diſcendeth vpon him, he was with in age, in thys caſe the heire may after enter vpon the alienee notwithſtanding the war-ranty diſcended &c. becauſe that no laches ſhal bee adiudged in the heire within age, that hee entred not vppon the alienee in the lyfe of the tenaunt in dower, but if the heire was with-in age at the time of the alienation, and after he came to full age in the life of the tenaunt in dower, and ſo being of full age, hee entred not in the lyfe of the tenaunt in dower, and after the tenant in dower dyeth, there peradnẽture the heire ſhalbe barred by ſuch warranty bee-cauſe it ſhalbe accompted his folly ꝑ he being of full age, entred not in the life of the tenaũt in dower &c.

¶ Alſo it is ſpoken in the end of the ſaide

ſtatute

eſtatute of Gloucester, that ſpeaketh of the alienation & warrantie made by the tenant by the curteſie in ſuch ſowrine.

¶ Alſo in ỹ ſame maner the heire of ỹ woman after the death of her father & mother ſhal not be barred of action if he demaund the heritage of ỹ mariage of his mother by a writ of Entre that hys father alyened in the tyme of hys mother, whereof no fine is leued in the kings court &c. And ſo by force of the ſame ſtatute if ỹ husband of the wife alien ỹ heritage or mariage of hys wife in fee with warranty &c. by his deede in the countrey, this is clere ſawe ỹ thus warrantie ſhal not barre the heire except he haue ynough by diſcent &c. But the doubt is if that the husband alien the heritage of hys wife by fine leuyed in the kings courtes with warrantie &c. If this ſhal barre the heire without any diſcēt in value &c. And as to that, I will ſay here certeyn reaſons that I haue heard ſay in this matter. I heard my maiſter ſir Richard Newton late chiefe Iuſtice of the common place ſay once in the ſame place, ỹ ſuch warrantie that the baron maketh by fine leuyed in the kinges court ſhall barre the heire though that he haue nothyng by diſcent, becauſe the ſtatut ſayeth, whereof no fine is leued in the kings court &c. And ſo by hys opinion, this warrantie by fine &c. abydeth yet a collaterall warrantie as it was at the common lawe not remedyed by the ſayde eſtatute, becauſe that the ſayde eſtatute excepteth the

alienacion by fine with warrantie. And some other haue layd & yet lay the contrary, & this is their proofe, that as by the same Chapiter of the layd statute, it is ordeined ỹ the warrantie of the tenaunt by the curtesie shall not barre the heire except he haue ynough by discent &c. though ỹ the tenant by ỹ curtesy leuy a fine of the same lands with warranty &c. as stronglie as he can, yet this warrantie shal not barre the heire except he haue assets or ynough by discent &c. And I beleue that this is law, and therefore they say that it should be inconuenient to vnderstand the statut in such forme that a man that hath not but in the ryght of his wife, may by fyne leuyed by him selfe of the tenementes that hee hath but in the ryght of his wife with warrantie &c. barre the heire of the saide tenementes wythout discent of the fee simple &c. where the tenant by curtesie cannot doe it. But they haue sayde, that the statute shalbe vnderstand after this forme that is to say, where the statute speaketh where of no fine is leuyed in the kinges court, that is to say, where no lawful fine is rightfully leuyed in the same kings court, and that is, where the fine of the husband & his wyfe is leuied in the kynges court, for at the tyme of the making of the saide statut, euery estate of landes or tenements that any man or woman had that should discend to his heire, was fee simple without condition or vppon condition in deede or in law. And because that such

fine

ne then might lawfully haue ben leuyed by the husband & his wife, and that the heires of the husband warrant &c. such warranty shal barre the heire &c.

¶ And to they say that this is the vnderstanding of the said statute. for if the husband and the wyfe made a feoffement in fee by deede in the countrey, the heire after the decease of the husband & the wife shal haue a writ of Entre sur cui in vita &c. notwithstanding the warranty of ỹ husband. Then if no such exception was made in the statute of ỹ fine leuied &c. the the heire should haue the writ of entre &c. notwithstanding ỹ fine leuied by the husband & the wife, because ỹ the wordes of the statut before the exception of the fine leuied &c. be generally &c. that is to say, that the heire of the woman after the death of her husband and the wife shal not bee barred of action if he demand the heritage by the mariage of his mother by a writ of entre that his father aliened in the time of his mother, and so it should be in the case of the statute except such wordes were, that is to say, whereof no fine is leuied in the kinges court. And so they say that this is to vnderstand, whereof no fine by the husband and the wife is leuied in the kinges court the which is lawfully leuyed in such case. For yf the Iustices haue knowledge ỹ a man ỹ hath nothing but in the right of his wife, will leuy a fyne in his name oneli, they will not nor ought not to take such fine to be leuied by the

husband only without naming the wife, therfore enquire of this matter.

¶ Also it is to weete ꝑ in such wordes where the heire demaundeth the heritage or mariage of his mother, this word is a disiunctiue, and is as much to say, if the heire demaund the heritage of his mother, that is to be vnderstand the tenemts that his mother had in fee simple by discent or by purchase, or if the heire demaund the mariage of his mother, ꝑ is to say, the tenemts ꝑ were geuen vnto hys mother in frankmariage.

¶ Also where it is moued in diuers dedes these wordes in latin. Ego & heredes mei &c. warrantizabimus & imppetutum defendem⁹, it is to see what effect hath that word defendemus in such dedes. And it semeth ꝑ it hath not the effect of warrantise, nor comprehēdeth any cause of warrantise. for if it should bee so that it taketh effect or cause of warrantise, thē it should be put in some fines leued in ꝑ kigs court. And a man neuer saw ꝑ these wordes defendemus was in fine but only this word warrantizabimus, by which it semeth ꝑ thys verbe warrantiso maketh warranty, & is the cause of warrantie, and none other worde in our lawe.

¶ Also if tenant in the taile be seysed of tenements deuysable by testament after the custome &c. And the tenaunt in the taile alieneth the tenements to his brother in fee, and hath issue and dyeth, and after his brother deuiseth by

by his testament the same tenemẽtes to another in fee, & bindeth him and his heires to warrãtise &c. and dieth without issue, it seemeth that thys warrantie shal not barre the issue in the tayle if he wil sue his writ of Formedon, because that his warranty discended not to the issue in the taile, in so much as the vncle of the issue was not bound by force of the same warrantie in his life. And ỹ cause ỹ hee could not warrãt the land in his life, is in so much that the deuisee could not take any execution or effect but after his decease, & in so much that the vncle in his life was not hold to warrantye, such warrauntise may not discend from him to the issue in the taile &c. for nothing may discend from the auncester to his heire but the sãe that was in the auncester. Also a warrantie may not goe without the nature of tenement by custome, but onely after forme of ỹ cõmon law. For if tenant in taile be seised of tenemẽts in borough english, where the custome is that al tenemẽts of the same borough ought to discende to the yongest sonne, & hee discontinueth the taile with warrantise &c. & hath issue two sonnes, & dieth seised of other lãds & tenemẽts in the same borough in fee simple to the value and more of the tenementes tailed & so forth, yet the yongest sonne shall haue a Formedon of the tenementes tayled, & shall not be barred by the warrãtise of his father though inough to him discended in fee simple frõ the same father after the custome, for thys that the war-

rantie discendeth vppon the elder brother that is in full lyfe &c. & not vppon the ponger sonne, ¶ In the same maner it is of collateral warrantise made of such tenemẽts where the warrãtise discendeth to the elder sonne &c. this shall not barre the ponger sonne &c. ¶ In ỹ same maner it is of tenementes in the shire of Kent, which be called Gauelkind, ỹ which tenemẽts be departable among the brethren &c. after the custome &c. if any such warrantie bee made by their auncestours, such warranty discendeth aloncly to the heire that is heire by the cõmon lawe, & not to al ỹ heires which are heires of such tenements after the custome &c.

¶ Also if a tenaunt in tayle haue issue two daughters by diuers bentres, and dyeth, and the daughters enter, and a straunger disseiseth them of the same tenementes, and one of the daughters releaseth by her deede to the disseysour al her ryght, and byndeth her & her heirs to warrantise, and dyeth without issue, in this case ỹ first that suruiueth may wel enter and put out the disseysour of al the tenements for this that such warrantise is no discontynuaunce nor collateral warrantise to the sister that suruiueth, for this that they bee of halfe bloud, and the one may not bee heire to the other after the common lawe. But otherwise it is where there bee daughters of tenauntes in the taile by one venter.

¶ Also if tenaunt in the tayle let tenementes to another for terme of life, the remaider to an

other

other in fee, and the collateral auncestor cõmeth the estate of the tenant for terme of life, & bindeth him and his heires to warrantise for terme of life of ỹ tenãt for terme of life & dieth, & the tenant in the taile hath issue & dieth, now this issue is barred to aske the tenementes by writ of Formdon during the life of the tenant for terme of life, because of the collateral discẽt vpon the issue in the taile. But after the decease of ỹ tenant for terme of life, the issue shal haue a Formedon &c. And vpon this I haue heard a reason that this case shal proue by an other case, that is to say, if a man let his land to another, to haue and to hold vnto him and to his heires for terme of anothers lyfe, & the lessour dieth, leauinge him to whose lyfe &c. And a straunger entreth in the land, that the heire of the lesse may put him out for this that in the case next aforesaide, insomuch that a mã may bynde him and his heires to warraunt to the tenaunt for terme of lyfe, alonely duryng the lyfe of the tenant for terme of lyfe, & the warrantise discendeth to the heire of hym that made the warrantise, the which warrantise is no warrantise of enheritaunce, but alonely for terme of anothers lyfe by the same reason where tenementes bee lett to a man, to haue and to holde to hym and to hys heires for terme of anothers lyfe, yf the father dye, liuing him to whose life &c. his heire shal haue the tenementes ynuinge hym to whose life &c. For they haue sayd, ỹ if a man graunt

Duty. an

an annuitie to another to haue & to take to him & to his heirs for terme of anothers life if the grauntee die &c. That after his heire shall haue the annuitie during the life of hi to whose life &c. Quere de ista materia &c.

¶ But where such a lease or graūt is made to a man & his heirs for terme of yeres, in this case the heire of the lessee & the grauntee shall neuer haue after the death of the lessee or the grauntee that, ꝑ is to letten or graunted, for this ꝑ it is achattel real, & al chattels reals by the common lawe shall come to the executors of the grauntee or the lessee, and not to the heire &c.

¶ Also in some cases it may be, that howbeit that a collateral warrantise be made in fee &c. yet such warrantise may be defeated & anientied. As the tenant in the taile discontinueth the tayle in fee. & the discontinuee is disseised, & the brother of the tenant in the tayle releaseth by his dede to the disseisour al his right &c. with warrantise in fee, & dieth without issue, & the tenant in the taile hath issue, and dieth, nowe the issue is barred of his action by force of the collateral warrantise discending vppon him, but if after this the discontinuee enter vpō the disseisour, then may the heires in the taile haue his action of Formdon &c. for this ꝑ the warrant is anientied & defeated. For when ꝑ warrantise is made vnto a man vpon any estate ꝑ thē he had, if the estate be defeated, the warrāt is defeated.

¶ In

¶ In the same maner it is if the discontinue make a feoffemt in fee reseruing to him certein rent, & for defaut of payemt a reentre &c. & a collateral auncestor releseth to ꝑ feoffee ꝑ hath estate vpon condition &c. & dieth without issue though ꝑ the warrantie discended vpō ꝑ issue in the taile, yet if after the rent bee behind & ꝑ discontinue entreth into the lande &c. then the issue in the tayle shal haue his recouery by a writ of Formedon, for this that ꝑ warrantye collateral is defeted. And so if any such collateral warranty be pleded against the issue in the taile in his action of Formedon, he may shew the matter as is aforesaid, how the warranty is defeated, and so he may wel maintein hys action.

Also if tenit in the taile make a feffemt to his vncle, & after his vncle maketh a feoffement in fee & warrantise &c. to another, & after the feoffee of ꝑ vncle enfeoffeth againe ꝑ vncle in fee, & after the vncle enfeoffeth a straunger in fee your warrātise, & dieth without issue, & ꝑ tenant in the taile wil bring his writ of Formō against the straūger that was in the feoffemēt &c. by the vncle, in this case the issu shal neuer be barred by the warranty ꝑ was made by the vncle to ꝑ said first feoffee of his vncle, for this that the said warrantise was defeated & anēted, for this that the vncle toke againe to him as great estate of hys saide first feoffee to whom the warrantie was made as the same feffee had of him. And the cause why the warrantie

rantie is aniented, in this case is this, ꝑ is to say, ꝑ if the warrantise were in his ioyce, then the vncle shall warrant vnto him selfe ꝑ may not be, but if the feoffee made estate to ꝑ vncle for terme of life or in fee taile, saving the reuersion vnto him &c. Or ꝑ he make a gift in the tayle to the vncle, or a lease for terme of lyfe, the remainder over &c. In this ꝑ warrantise is not al vterly aniented, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issu, thē he in the reuersion or he in the remainder shal barre the issue in the taile of his writ of Formedon by the collaterall warrantise in such case &c. But otherwise it is where ꝑ vncle had as great estate in the land by ꝑ feoffee to whō the warrantise was made as the feoffee had of him &c.

¶ Also if the vncle after such feffemēt made with warrantise or a release made by him wᵗʰ warrātise be attaint of felony or outlawed of felony, such collateral warrantye shal not bar nor greeue the issue in ꝑ taile, for this ꝑ by the attaider of felony, the bloud is corrupt betwen them &c.

¶ Also if tenāt in the taile be disseised, & after maketh a release to the disseisor wᵗʰ warrantise in fee, & after the tenant in the taile is attaint, or outlawed of felony, & hath issue & dieth, in this case the issue in the taile may enter vpon the disseisour.

¶ And ꝑ cause is for this, ꝑ nothing maketh discon-

discontinuance in this case but ꝑ warrantie, & the warrantie may not discend to ꝑ issue in ꝑ taile, for this ꝑ the blood is corrupt betweene him that made the warrantie & the issu in the taile. For the warrantie alway abideth at ꝑ common law, & the cõmon law is such, ꝑ whē a man is outlawed or attaint of felony, which outlary is an attainder in the law ꝑ the blood betweene him & his sonne and al other which should be said his heirs is corrupt, so that nothing by discent may discend to any that may be his heire by the cõmon law. And ꝑ wife of such a mã ꝑ is so attaint shal neuer be endowed in the tenemẽts of her husbãd so attaint &c.

¶ And the cause is because men should more eschewe to doe felony &c. But the issue in the taile, as to the tenements tayled is not in such case barred, because he is inherited by force of the statute, and not by the course of the cõmon law. And therefore such attaynder of hys father or of his auncestor in the tayle &c. shal not put him out of his right, that he should haue by force of the tayle.

¶ Also if tenaunt in the tayle enfeoffe hys vncle which enfeoffeth another with warrantie &c. after the feoffee by hys deede releaseth to the vncle al maner of warrantie, or al maner of couenantes reals, or al maner of demaundes, by such release the warranty is extynct. And yf the warrantye in such case bee pleaded against the heire in the tayle that barreth hys writ of Formedon to barre the heire of

hys

his action of the heire haue and plede the sayd releasse &c. he shal defeate the plee in barre &c. And many other causes & matters be there, wherby a man may defeate warranties.

¶ And it is to weete that in the same maner as collateral warrantie may bee defeated by matter in deede or in lawe, in the same maner may lineal warrantie bee defeated &c. For if ỳ heire in the tayle bring a writ of Formdon, & a lyneal warrantie of his auncester inhetitable by force of ỳ taile be pleaded against hym with that ỳ alleges to him discended of fee simple by the same auncester ỳ made the warrantie, if the heire that is demaundaunt may annul & defeate the warranty, this sufficeth to him. for ỳ discet of other tenemẽts of fee simple make nothing to barre the heire without the warrantie &c.

FINIS.

¶ Here beginneth the Table of this present booke.

The second booke.

Rent

The Table.

The thirde booke.

¶ And knowe thou my sonne that I will not that thou beleue that al that that I haue sayde in the saide bookes be lawe. for that will I not take vppon mee nor presume. But of those thynges that be not lawe enquire & learne of my wise maisters learned in the lawe. Notwithstanding though that certeine thinges that bee noted and specifyed in the sayde bookes bee not lawe, yet such thynges shall

make

make thee more apt & able to vnderstand, and learne the argumentes and the reasons of the lawe. For by the arguments and the reasons in the lawe, a man may more sooner come to the certeinte and to the knowledge of the lawe. Lex plus laudatur quando ratione probatur.

Imprinted at London in Fletestrete within Temple Barre at the signe of the hand and Starre by Rychard Tottel.
1581.

Cum priuilegio.